

LIBRARY  
SUPREME COURT. U. S.

# **TRANSCRIPT OF RECORD**

---

**Supreme Court of the United States**

**OCTOBER TERM, 1961**

**No. ~~615~~ 37**

---

**NATIONAL LABOR RELATIONS BOARD,  
PETITIONER,**

**vs.**

**OCHOA FERTILIZER CORPORATION, ET AL.**

---

**ON WRIT OF CERTIORARI TO THE UNITED STATES  
COURT OF APPEALS FOR THE FIRST CIRCUIT**

---

**PETITION FOR CERTIORARI FILED JANUARY 16, 1961  
CERTIORARI GRANTED MARCH 6, 1961**

# Supreme Court of the United States

OCTOBER TERM, 1960

No. 654

NATIONAL LABOR RELATIONS BOARD,  
PETITIONER,

vs.

OCHOA FERTILIZER CORPORATION, ET AL.

ON WRIT OF CERTIORARI TO THE UNITED STATES  
COURT OF APPEALS FOR THE FIRST CIRCUIT

## INDEX

	Original	Print
Proceedings before the National Labor Relations Board		
Charge against employer in Case No. 24-CA-1038 .....	1	1
Letter from Regional Director to Ochoa Fertilizer Corporation transmitting charge and requesting information, dated June 27, 1958..	2	3
Charge against labor organization or its agents in Case No. 24-CB-271 .....	3	5
Amended charge against employer in Case No. 24-CA-1038 .....	4	7
Amended charge against labor organization or its agents in Case No. 24-CB-271 .....	5	10
Order consolidating cases, consolidated complaint and notice of hearing .....	6	13

## Original    Print

Proceedings before the National Labor Relations  
Board—Continued

Stipulation of parties .....	14	21
Appendix "A"—Proposed notice to all employees of Ochoa Fertilizer Corporation, etc. ....	25	31
Appendix "B"—Proposed notice to all members of International Longshoremen's Association, etc. ....	28	34
Decision and order of National Labor Relations Board .....	30	37
Appendix "A"—Notice to all employees of Ochoa Fertilizer Corporation .....	35	45
Appendix "B"—Notice to all members of International Longshoremen's Association .....	37	48
Proceedings in the United States Court of Appeals for the First Circuit .....	39	50
Petition for enforcement of an order of the National Labor Relations Board upon stipulation of the parties for consent decree .....	39	50
Submission .....	42	52
Decree of July 8, 1960 .....	43	53
Motion for reconsideration and denial thereof .....	45	55
Second motion for reconsideration .....	47	56
Per curiam opinion of the United States Court of Appeals for the Second Circuit in the case of NLRB v. Combined Century Theatres, Inc., et al., dated August 3, 1960 .....	48	57
Opinion, Aldrich, J. ....	50	59
Order of court denying second motion for reconsideration .....	62	69
Clerk's certificate (omitted in printing) .....	63	69
Order allowing certiorari .....	64	70

[fol. 1] (File endorsement omitted)

## BEFORE THE NATIONAL LABOR RELATIONS BOARD

**CHARGE AGAINST EMPLOYER—Filed June 26, 1958**

Where a charge is filed by a labor organization, or an individual or group acting on its behalf, a complaint based upon such charge will not be issued unless the charging party and any national or international labor organization of which it is an affiliate or constituent unit have complied with section 9 (f), (g), and (h) of the National Labor Relations Act.

**INSTRUCTIONS.**—File an original and 4 copies of this charge with the NLRB regional director for the region in which the alleged unfair labor practice occurred or is occurring.

*Do Not Write in This Space*

Case No.—24-CA-1038

Date Filed—June 26, 1958

Compliance Status Checked By:

### 1. *Employer Against Whom Charge Is Brought*

**NAME OF EMPLOYER**—Ochoa Fertilizer Corporation

**NUMBER OF WORKERS EMPLOYED**—200

**ADDRESS OF ESTABLISHMENT** (Street and number, city, zone, and State)—Guánica, P. R. and Stop 27½, Hato Rey, P. R.

**TYPE OF ESTABLISHMENT** (Factory, mine, wholesaler, etc.)  
factory

**Identify principal product or service**—fertilizer

The above-named employer has engaged in and is engaging in unfair labor practices within the meaning of section 8(a), subsections (1) and (List subsections) (3) of the National Labor Relations Act, and these unfair labor practices are unfair labor practices affecting commerce within the meaning of the Act.

2. *Basis of the Charge* (Be specific as to facts, names, addresses, plants involved, dates, places, etc.)



Since on or about June 8, 1958 and at all times thereafter the above named employer failed and refused to offer and give Juan Padilla, the below named charging individual, his regular employment at the behest of Local 1762, International Longshoremen Association and for reasons other than his lack of membership in said labor organization.

By the above and by other acts and conduct the above named employer has interfered, restrained and coerced its employees in the exercise of their rights guaranteed by Section 7 of the Act in violation of Section 8(a)(1) of the Act as amended.

3. *Full Name of Party Filing Charge* (if labor organization, give full name, including local name and number)—  
Juan Padilla

4. *Address* (Street and number, city, zone, and State)—  
P. O. Box 954, Ensenada, P. R.  
*Telephone No.*—

5. *Full Name of National or International Labor Organization of Which It Is an Affiliate or Constituent Unit* (To be filled in when charge is filed by a labor organization)

6. *Address of National or International, if any* (Street and number, city, zone, and State)—  
*Telephone No.*—

7. *Declaration*—

I declare that I have read the above charge and that the statements therein are true to the best of my knowledge and belief.

By /s/ Juan Padilla      JUAN PADILLA

(Signature of representative or person filing charge)

(Date)—June 26, 1958

(Title, if any)—an individual

*Willfully false statements on this charge can be punished by fine and imprisonment (U. S. Code, Title 18, Section 80)*

CAM/rnp

[fol. 2] 27 June 1958

*Ochoa Fertilizer Corporation*  
*24-CA-1038*

**Ochoa Fertilizer Corporation**  
**Guanica, Puerto Rico**

**Gentlemen:**

The above captioned case alleging that your company has engaged in unfair labor practices pursuant to the National Labor Relations Act, as amended, has been filed by Juan Padilla.

The investigation of this charge has been assigned to one of our examiners who in due time shall contact you. Meanwhile, I shall appreciate your giving me details and circumstances which according to you surround the above mentioned case.

Please give also the following information:

1. Approximate figures concerning the operations of your business in and outside Puerto Rico;
2. Information as to the volume, value and proportion of materials purchased or brought from places outside Puerto Rico to be used in the establishment involved;
3. Similar information about the products sold or shipped to places outside Puerto Rico;
4. If your company is engaged in defense work.

Very truly yours,

**Salvatore Cosentino**  
**Regional Director**

Encl. Copy of Charge

***Registered Mail—Return Receipt Requested***

I Certify that I served the above referred to charge this day by postpaid registered mail on the addressee named above, together with a transmittal letter of which this is a true copy.

/s/ Victor Hartington

Subscribed and sworn to before me this 27 day of June, 1958.

/s/ Clara Dorner  
Designated Agent

• • • •

[fol. 3]

(File endorsement omitted)

**BEFORE THE  
NATIONAL LABOR RELATIONS BOARD**

**CHARGE AGAINST LABOR ORGANIZATION OR ITS AGENTS—  
Filed June 26, 1958**

Where a charge is filed by a labor organization, or an individual or group acting on its behalf, a complaint based upon such charge will not be issued unless the charging party and any national or international labor organization of which it is an affiliate or constituent unit have complied with section 9 (f), (g), and (h) of the National Labor Relations Act.

**INSTRUCTIONS:** File an original and 3 copies of this charge, and an additional copy for each organization, each local and each individual named in item 1 with the NLRB regional director for the region in which the alleged unfair labor practice occurred or is occurring.

*Do Not Write in This Space*

Case No.—24-CB-271

Date Filed—June 26, 1958

Compliance Status Checked By:

1. *Labor Organization or Its Agents Against Which Charge Is Brought*

**NAME**—Local 1762, International Longshoremen Association, District Council of the Ports of P. R., ILA IND.

**ADDRESS**—P. O. Box 251, Ensenada, P. R.

The above-named organization(s) or its Agents has (have) engaged in and is (are) engaging in unfair labor practices within the meaning of Section 8(b) Subsection(s) (List subsections) (1)(A)(2) of the National Labor Relations Act, and these unfair labor practices are unfair labor practices affecting commerce within the meaning of the Act.

2. *Basis of the Charge* (Be specific as to facts, names, addresses, plants involved, dates, places, etc.)

Since on or about June 8, 1958 and at all times thereafter the above named labor organization, through its President, caused or attempted to cause Ochoa Fertilizer Corporation to discriminate against Juan Padilla, the below named charging individual, by failing and refusing to notify him of his regular work opportunity at said company and for reasons other than his failure to maintain membership in said labor organization.

By the above and by other acts and conduct the above named union has restrained and coerced the employees of the above referred to company in the exercise of their rights guaranteed by Section 7 of the Act.

3. *Name of Employer*—Ochoa Fertilizer Corporation

4. *Location of Plant Involved* (Street, City, and State)  
Guánica, P. R. Stop 27½, Hato Rey, P. R.

5. *Type of Establishment* (Factory, mine, wholesaler, etc.)—factory

6. *Identify Principal Product or Service*—fertilizer

7. *No. of Workers Employed*—200

8. *Full Name of Party Filing Charge*—Juan Padilla  
(an individual)

9. *Address of Party Filing Charge* (Street, City, and State)—P. O. Box 954, Ensenada, P. R.

10. *Tel. No.*—

11. *Declaration*—

I declare that I have read the above charge and that the statements therein are true to the best of my knowledge and belief.

By /s/ Juan Padilla      JUAN PADILLA

(Signature of representative or person making charge)

(Date)—June 26, 1958

(Title or office, if any)—an individual

*Wilfully false statements on this charge can be punished by fine and imprisonment (U.S. Code, Title 18, Section 1001)*

CAM/rnp

[fol. 4] (File endorsement omitted)

**BEFORE THE  
NATIONAL LABOR RELATIONS BOARD**

**AMENDED CHARGE AGAINST EMPLOYER—Filed Nov. 26, 1958**

Where a charge is filed by a labor organization, or an individual or group acting on its behalf, a complaint based upon such charge will not be issued unless the charging party and any national or international labor organization of which it is an affiliate or constituent unit have complied with section 9 (f), (g), and (h) of the National Labor Relations Act.

**INSTRUCTIONS.**—File an original and 4 copies of this charge with the NLRB regional director for the region in which the alleged unfair labor practice occurred or is occurring.

*Do Not Write in This Space*

Case No.—24-CA-1038

Date Filed—November 26, 1958

Compliance Status Checked By:

**1. Employer Against Whom Charge Is Brought**

**NAME OF EMPLOYER—**Ochoa Fertilizer Corporation

**NUMBER OF WORKERS EMPLOYED—**200

**ADDRESS OF ESTABLISHMENT (Street and number, city, zone, and State)—**P. O. Box 117 Hato Rey, Puerto Rico

**TYPE OF ESTABLISHMENT (Factory, mine, wholesaler, etc.)**  
factory

**Identify principal product or service—**manufactures chemical fertilizer

The above-named employer has engaged in and is engaging in unfair labor practices within the meaning of section 8(a), subsections (1), (List subsections) (2) and (3) of the National Labor Relations Act, and these unfair labor practices are unfair labor practices affecting commerce within the meaning of the Act.



2. *Basis of the Charge* (Be specific as to facts, names, addresses, plants involved, dates, places, etc.)

1. The above named Employer since on or about December 26, 1957 and at all times thereafter has maintained in effect and enforced closed shop provisions contained in a contract executed with International Longshoremen Association, District Council of the Ports of P.R., and its Local 1762, International Longshoremen Association, District Council of the Ports of P.R. ILA-IND (also known as Union de Estibadores de Guánica, IBL SubLocal 1900), on July 19, 1951 for a period of five years which was extended for an additional five years on September 5, 1955.

2. The above named Employer since on or about December 26, 1957 has maintained in effect and applied an unlawful hiring hall arrangement contained in a contract with International Longshoremen Association, District Council of the Ports of P.R. and its Local 1762, International Longshoremen Association, District Council of the Ports of P.R., ILA-IND, (also known as Unión de Estibadores de Guánica, IBL SubLocal 1900), executed on July 19, 1951 for a period of five years which was extended for an additional five years on September 5, 1955.

3. Since on or about December 26, 1957 the above named Employer engaged in a practice, based on an understanding, arrangement or agreement with International Longshoremen Association, District Council of the Ports of P.R., and its Local 1762, International Longshoremen Association, District Council of the Ports of P.R., ILA-IND (also known as Unión de Estibadores de Guánica, IBL SubLocal 1900), whereby only members of said labor organizations are given employment at stevedoring and related occupations at its pier in Guánica, P. R. and whereby only employees, or applicants for employment presenting union membership or union clearance cards are given employment in the loading or unloading of ships for said Employer at said pier.

4. By the above and by other acts and conduct the Employer has interfered with, restrained and coerced its em-

ployees in the exercise of their rights guaranteed in Section 7 of the Act in violation of Section 8(a)(1) of the Act, as amended.

3. *Full Name of Party Filing Charge* (if labor organization, give full name, including local name and number)—  
Juan Padilla (an individual)

4. *Address* (Street and number, city, zone, and State)—  
P. O. Box 954, Ensenada, P. R.

*Telephone No.*—

5. *Full Name of National or International Labor Organization of Which It Is an Affiliate or Constituent Unit* (To be filled in when charge is filed by a labor organization)

6. *Address of National or International, if any* (Street and number, city, zone, and State)—

*Telephone No.*—

7. *Declaration*—

I declare that I have read the above charge and that the statements therein are true to the best of my knowledge and belief.

By /s/ Juan Padilla      JUAN PADILLA

(Signature of representative or person filing charge)

(Date)—November 26, 1958

(Title, if any)—an individual

*Willfully false statements on this charge can be punished by fine and imprisonment (U. S. Code, Title 18, Section 80)*

CAM/rnp



[fol. 5] **BEFORE THE  
NATIONAL LABOR RELATIONS BOARD**

**AMENDED CHARGE AGAINST LABOR ORGANIZATION OR ITS  
AGENTS—Filed Nov. 26, 1958**

Where a charge is filed by a labor organization, or an individual or group acting on its behalf, a complaint based upon such charge will not be issued unless the charging party and any national or international labor organization of which it is an affiliate or constituent unit have complied with section 9 (f), (g), and (h) of the National Labor Relations Act.

**INSTRUCTIONS:** File an original and 3 copies of this charge, and an additional copy for each organization, each local and each individual named in item 1 with the NLRB regional director for the region in which the alleged unfair labor practice occurred or is occurring.

*Do Not Write in This Space*

Case No.—24-CB-271

Date Filed—November 26, 1958

Compliance Status Checked By:

*1. Labor Organization or Its Agents Against Which  
Charge Is Brought*

**NAME**—International Longshoremen Association, District Council of the Ports of P.R., ILA-IND and Local 1762, International Longshoremen Association, District Council of the Ports of P.R., ILA-IND. (also known as Unión de Estibadores de Guánica, IBL SubLocal 1900)

**ADDRESS**—Box 2374, San Juan, P.R. and Box 251, Ensenada, P.R.

The above-named organization(s) or its Agents has (have) engaged in and is (are) engaging in unfair labor practices within the meaning of Section 8(b) Subsection(s) (List subsections) (1)(A) & (2) of the National Labor Relations Act, and these unfair labor practices are

unfair labor practices affecting commerce within the meaning of the Act.

2. *Basis of the Charge* (Be specific as to facts, names, addresses, plants involved, dates, places, etc.)

1. The above named labor organizations since on or about December 26, 1957 and at all times thereafter have maintained in effect and enforced closed shop provisions contained in a contract executed with Ochoa Fertilizer Corporation on July 19, 1951 for a period of five years which was extended for an additional five years on September 5, 1955.

2. The above named labor organizations since on or about December 26, 1957 have maintained in effect and applied an unlawful hiring hall arrangement contained in a contract with Ochoa Fertilizer Corporation executed on July 19, 1951 for a period of five years which was extended for an additional five years on September 5, 1955.

3. Since on or about December 26, 1957 the above named labor organizations have engaged in a practice, based on an understanding, arrangement or agreement with Ochoa Fertilizer Corporation whereby only members of said labor organizations are given employment at stevedoring and related occupations at Ochoa Fertilizer Corporation's pier in Guánica, P.R., and whereby only employees or applicants for employment presenting said union's membership or clearance cards are given employment in the loading or unloading of ships for said Ochoa Fertilizer Corporation at its Guánica, P. R. pier.

4. By the above and by other acts and conduct the aforementioned labor organizations have restrained and coerced employees or prospective employees of Ochoa Fertilizer Corporation in the exercise of their rights guaranteed in Section 7 of the Act in violation of Section 8(b)(1)(A) of the Act, as amended.

3. *Name of Employer*—Ochoa Fertilizer Corporation

4. *Location of Plant Involved* (Street, City, and State)  
Guánica, P. R.

5. *Type of Establishment* (Factory, mine, wholesaler, etc.)—factory

6. *Identify Principal Product or Service*—manufactures chemical fertilizer

7. *No. of Workers Employed*—200

8. *Full Name of Party Filing Charge*—Juan Padilla (an individual)

9. *Address of Party Filing Charge* (Street, City, and State)—P. O. Box 954, Ensenada, P. R.

10. *Tel. No.*—

11. *Declaration*—

I declare that I have read the above charge and that the statements therein are true to the best of my knowledge and belief.

By /s/ Juan Padilla      JUAN PADILLA

(Signature of representative or person making charge)

(Date)—November 26, 1958

(Title or office, if any)—(an individual)

*Wilfully false statements on this charge can be punished by fine and imprisonment (U. S. Code, Title 18, Section 1001)*

CAM/rnp

[fol. 6]

**BEFORE THE  
NATIONAL LABOR RELATIONS BOARD  
24TH REGION**

**Case No. 24-CA-1038**

**In the Matter of  
OCHOA FERTILIZER CORPORATION**

**and**

**JUAN PADILLA**

**and**

**INTERNATIONAL LONGSHOREMEN'S ASSOC. DISTRICT COUNCIL  
OF THE PORTS OF P.R., ILA-IND., and INTERNATIONAL  
LONGSHOREMEN'S ASSOCIATION, LOCAL 1762, DCPPR, ILA-  
IND., (also known as UNION DE ESTIBADORES DE GUANICA,  
IBL SubLocal 1900)**

**Parties to the Contract**

**Case No. 24-CB-271**

**INTERNATIONAL LONGSHOREMEN'S ASSOC. DISTRICT COUNCIL  
OF THE PORTS OF P.R., ILA-IND., and INTERNATIONAL  
LONGSHOREMEN'S ASSOCIATION, LOCAL 1762, DCPPR, ILA-  
IND., (also known as UNION DE ESTIBADORES DE GUANICA,  
SubLocal 1900)**

**and**

**JUAN PADILLA**

**and**

**OCHOA FERTILIZER CORPORATION**

**Party to the Contract**

**ORDER CONSOLIDATING CASES, CONSOLIDATED COMPLAINT and  
NOTICE OF HEARING—Feb. 26, 1959**

**It having been charged by Juan Padilla (herein called  
Padilla) against Ochoa Fertilizer Corporation (herein  
called Respondent Company) in Case No. 24-CA-1038; and  
against International Longshoremen's Association, Local**

1762, DCPPR, ILA-IND., (also known as Union de Estibadores de Guanica, IBL Sub-Local 1900) (herein called [fol. 7] Respondents ILA Council and ILA Local 1762) in Case No. 24-CB-271, that said Respondents have engaged in, and are engaging in, unfair labor practices affecting commerce as set forth and defined in the National Labor Relations Act, as amended, 61 Stat. 136, herein called the Act, the General Counsel of the National Labor Relations Board (herein called the Board) by the undersigned Regional Director for the Twenty-Fourth Region, having duly considered the matter and deemed it necessary in order to effectuate the purposes of the Act, and to avoid unnecessary costs and delay,

IT IS HEREBY ORDERED, pursuant to Section 102.33 of the Board's Rules and Regulations, Series 7, that these cases be, and they hereby are, consolidated.

Said cases having been consolidated for hearing, the General Counsel of the Board, on behalf of the Board, by the undersigned Regional Director, pursuant to Section 10 (b) of the Act and the Board's Rules and Regulations, Series 7, Section 102.15, hereby issues this Consolidated Complaint and Notice of Hearing and alleges as follows:

## I

A copy of the charge filed on June 26, 1958 in Case No. 24-CA-1038 was served by registered mail upon the Respondent Company on June 27, 1958. A copy of the first amended charge filed on November 26, 1958 was served by registered mail upon the Respondent Company on December 1, 1958.

A copy of the charge filed on June 26, 1958 in Case No. 24-CB-271 was served by registered mail upon the Respondents ILA Council and ILA Local 1762 on June 27, 1958. A copy of the first amended charge filed on November 26, 1958 was served by registered mail upon the Respondents ILA Council and ILA Local 1762 on December 1, 1958.

[fol. 8]

## II

Ochoa Fertilizer Corporation is a corporation of the Commonwealth of Puerto Rico with its principal place

of business and plant located at Hato Rey, P.R., where it is engaged in the manufacture of chemical fertilizers. In connection with its business operations it also maintains a fertilizer manufacturing plant, warehouse and dock facilities at the port of Guanica, P.R. At its dock in Guanica, P.R., it receives and unloads ships which bring materials necessary for its manufacturing operations. During the year 1958 it imported chemicals and other materials which were valued at in excess of \$4,000,000. During the same period it exported fertilizers and other products valued at in excess of \$100,000. Its annual volume of business is in excess of \$8,000,000.00.

### III

Ochoa Fertilizer Corporation is, and at all times material herein has been, engaged in commerce within the meaning of Section 2, subsections (6) and (7) of the Act.

### IV

Respondents ILA Council and ILA Local 1762 are each labor organizations within the meaning of Section 2, subsection (5) of the Act.

### V

Respondent ILA Local 1762 is an affiliate of the ILA Council, which Council exists in part for the purpose of representing local unions which are affiliated therewith, including Respondent ILA Local 1762, in the negotiation, execution and administration of collective bargaining contracts for itself and on behalf of its affiliated Locals, including the Respondent ILA Local 1762.

[fol. 9]

### VI

On or about July 19, 1951 Respondent ILA Council acting for itself and on behalf of its affiliate Respondent ILA Local 1762, executed a collective bargaining contract with the Respondent Company relating to the hire, terms and conditions of employment of the stevedores and related workers employed by said company at its dock located at the port of Guanica. Said contract was exe-



cuted for a term of 5 years to expire on December 31, 1955. On or about Sept. 5, 1955 Respondent ILA Council acting for itself and on behalf of its Local 1762 executed a Stipulation Agreement with the Respondent Company extending the terms of the contract of July 19, 1951 for an additional period of 5 years, until December 31, 1960.

## VII

The collective bargaining contract of July 19, 1951 referred to above, as extended by the Stipulation Agreement of Sept. 5, 1955, contains *inter alia* an agreement whereby all employees or applicants for work as stevedores or other related work at the dock of the Respondent Company at the port of Guanica are required to be members of Respondent ILA Local 1762 as a condition of employment.

## VIII

The contract of July 19, 1951 referred to above, as extended by the Stipulation Agreement of Sept. 5, 1955, also contains an agreement whereby the Respondent Company is required to call upon the Respondent ILA Local 1762 to refer employees or applicants for employment as stevedores or other workers which it may need to unload ships at its dock located in the port of Guanica. Said agreement further provides that the Respondent Company could hire employees for said work from other sources only in the event that the Respondent ILA Local 1762 fails to furnish said workers one hour before the unloading operations are scheduled to begin.

[fol. 10]

## IX

The exclusive hiring or referral arrangement described above in paragraph VIII fails to incorporate, and the Respondents have failed to put into effect, any standards or criteria for the selection and referral of employees or applicants for employment by the Respondent ILA Local 1762. Said agreement also does not contain explicit provisions requiring the Respondent ILA Local 1762 to make the selections and referrals of employees on a non-discriminatory basis without regard to the membership or

non-membership of the employees or applicants for employment in said union. It also does not contain a reservation on the part of the Respondent Company which would enable it to reject any employee or applicant for employment referred to it by said union. It also fails to contain a provision for the posting of the terms and conditions of said referral arrangement at a place or places where employees or applicants for employment would have notice thereof.

## X

At all times since the execution of the contract of July 19, 1951 and of the Stipulation Agreement of Sept. 5, 1955 extending the same, the Respondent Company and the Respondents ILA Council and its Local 1762 at the port of Guanica have maintained in effect and enforced the closed shop and exclusive hiring referral arrangements referred to above in paragraphs VII and VIII.

## XI

The contract of July 19, 1951, as extended by the Stipulation Agreement of Sept. 5, 1955 mentioned above in paragraph VI, also contains a provision whereby the Respondent Company agrees, upon proper authorization from its employees, to check off or deduct the sum of ten (10) cents from the salary of each said employee for every shift of work performed by him and to turn said moneys over to the Respondent ILA Council.

[fol. 11]

## XII

At all times since the execution of the contract of July 19, 1951 and of the Stipulation Agreement of Sept. 5, 1955 extending the same, the check-off arrangement referred to above in paragraph XI has been maintained in effect and applied by the parties thereto to all stevedores and related workers who have worked at the Respondent Company's dock at the port of Guanica.

## XIII

At all times since the execution of the contract of July 19, 1951 and of the Stipulation Agreement of Sept. 5, 1955



extending the same, the Respondent Company and Respondents ILA Council and its Local 1762 have required all employees and applicants for employment at the Respondent Company's dock at the port of Guanica, to become and remain members of Respondent ILA Local 1762 and to pay an initiation fee and monthly dues to said Respondent ILA Local 1762 and the work shift fee to Respondent ILA Council as conditions of employment, in accordance with the closed shop agreement referred to above in paragraph VII.

#### XIV

By the acts and each of them described above in paragraphs VII, VIII, IX, X, XI, XII and XIII, the Respondent Company has interfered with, restrained and coerced, and is interfering with, restraining and coercing employees in the exercise of the rights guaranteed by the Act and by said acts and each of them it has discriminated and is discriminating against employees in regard to their hire, tenure, terms and conditions of employment to encourage membership in a labor organization, and by said acts it has rendered and is rendering financial and other assistance and support to a labor organization, and thereby it violated and is violating Sections 8 (a) (1), (2) and (3) of the Act.

[fol. 12]

#### XV

By the acts and each of them described above in paragraphs VII, VIII, IX, X, XI, XII and XIII, Respondents ILA Council and its Local 1762 restrained and coerced, and are restraining and coercing employees in the exercise of the rights guaranteed by the Act, and by said acts and each of them they caused or attempted to cause, and are causing or attempting to cause an employer to discriminate against employees in regard to their hire, tenure, terms and conditions of employment to encourage membership in a labor organization, and thereby they violated and are violating Sections 8 (b) 1 (A) and (2) of the Act.

**XVI**

The acts and conduct of all Respondents herein as set forth in paragraphs VII through XIII, occurring in connection with the operations of Respondent Company described in paragraph II above, have a close, intimate and substantial relation to trade, traffic and commerce among the several states and territories of the United States and the Commonwealth of Puerto Rico, and tend to lead to labor disputes, burdening and obstructing commerce and the free flow of commerce, and constitute unfair labor practices affecting commerce within the meaning of Section 8 (a) (1), (2) and (3), and Section 8 (b) (1) (A) and (2) of the Act, and Section 2 (6) and (7) of the Act.

**NOTICE OF HEARING**

**PLEASE TAKE NOTICE** that on the 7th day of April, 1959, at the Fifth Floor, Banco Credito y Ahorro Bldg., Stop 17, Ponce de Leon Ave., Santurce, P.R., at 10:00 a.m., a hearing will be conducted before a duly designated Trial Examiner of the National Labor Relations Board on the allegations set forth in the above Consolidated Complaint, at which time and place you will have the right to appear [fol. 13] in person, or otherwise, and give testimony.

You are further notified that pursuant to Sections 102.20 and 102.21 of the Board's Rules and Regulations, you are required to file with the Regional Director within ten (10) days after service of the annexed complaint upon you, an original and four (4) copies of an answer which specifically admits, denies or explains each of the facts alleged in said complaint, unless you are without knowledge, in which case you shall so state. Unless such answer is filed within the time required, all the allegations of said complaint shall be deemed to be admitted to be true and may be so found by the Board unless good cause to the contrary is shown.

**WHEREFORE**, the General Counsel of the National Labor Relations Board, on behalf of the Board, by the Regional Director for the Twenty-Fourth Region, on this 26th day of February, 1959, hereby issues this Order Consolidating Cases, Consolidated Complaint and Notice of Hearing

against Ochoa Fertilizer Corporation and International Longshoremen's Association, District Council of the Ports of P.R., ILA Ind., and International Longshoremen's Assoc. Local 1762, DCPPR, ILA-Ind., (also known as Union de Estibadores de Guanica, IBL Sub-Local 1900), the Respondents herein.

/s/ Raymond J. Compton  
RAYMOND J. COMPTON  
Regional Director

[fol. 14]

**BEFORE THE  
NATIONAL LABOR RELATIONS BOARD  
24TH REGION**

**Case No. 24-CA-1038**

**OCHOA FERTILIZER CORPORATION**

**and**

**JUAN PADILLA**

**and**

**INTERNATIONAL LONGSHOREMEN'S ASSOC. DISTRICT COUNCIL  
OF THE PORTS OF P.R., ILA-IND., and INTERNATIONAL  
LONGSHOREMEN'S ASSOCIATION, LOCAL 1762, DCPPR, ILA-  
IND., (also known as UNION DE ESTIBADORES DE GUANICA,  
IBL-SUB LOCAL 1900)**

**Parties to the Contract**

**Case No. 24-CB-271**

**INTERNATIONAL LONGSHOREMEN'S ASSOC. DISTRICT COUNCIL  
OF THE PORTS OF P.R., ILA-IND., and INTERNATIONAL  
LONGSHOREMEN'S ASSOCIATION, LOCAL 1762, DCPPR, ILA-  
IND., (also known as UNION DE ESTIBADORES DE GUANICA,  
SUB-LOCAL 1900)**

**and**

**JUAN PADILLA**

**and**

**OCHOA FERTILIZER CORPORATION**

**Party to the Contract**

**STIPULATION—January 29, 1960**

It is hereby stipulated and agreed by and between  
Hernan R. Franco, Attorney for Respondent Company,  
Ochoa Fertilizer Corporation (hereinafter referred to as  
Respondent Ochoa); Jose Aulet, Attorney for Interna-  
tional Longshoremen's Association, District Council of the  
Ports of Puerto Rico, ILA-Ind., and International Long-

shoremen's Association, Local 1762, DCPPR, ILA-Ind. (also known as Union de Estibadores de Guanica, IBL Sub-Local 1900), (hereinafter individually referred to as Respondent ILA Council and Respondent ILA Local 1762 respectively, and collectively referred to as Respondent Unions), Juan Padilla Torres, the charging party herein, and General Counsel of the National Labor Relations Board, 24th Region, that:

[fol. 15]

## I

Upon a charge filed on June 26, 1958 and an amended charge filed on November 26, 1958 by Juan Padilla against Respondent Ochoa in Case No. 24-CA-1038 alleging violations of Sections 8 (a) (1), (2) and (3) of the Act, receipt of which charges is hereby acknowledged by the Respondent Ochoa; and upon a charge filed on June 26, 1958 and an amended charge filed on November 26, 1958 by Juan Padilla against Respondents ILA Council and ILA Local 1762 in Case No. 24-CB-271 alleging violations of Sections 8 (b) (1) (A) and (2) of the Act, receipt of which charges is hereby acknowledged by Respondents ILA Council and ILA Local 1762, the General Counsel of the National Labor Relations Board, on behalf of the National Labor Relations Board (hereinafter called the Board) by the Regional Director for the 24th Region, acting pursuant to authority granted in Section 10 (b) of the National Labor Relations Act, 61 Stat. 136 (herein called the Act) and pursuant to Section 102.15 of the Board's Rules and Regulations, issued an Order Consolidating Cases, Consolidated Complaint and Notice of Hearing dated February 26, 1959 against said Respondent Ochoa and Respondents ILA Council and ILA Local 1762. True copies of the Order Consolidating Cases, Consolidated Complaint and Notice of Hearing were duly served by registered mail upon the Respondent Ochoa and Respondents ILA Council and ILA Local 1762, in accordance with the Board's Rules and Regulations, Series 8.

## II

Respondent Ochoa is a corporation of the Commonwealth of Puerto Rico with its principal place of business

and plant located at Hato Rey, Puerto Rico, where it is engaged in the manufacture of chemical fertilizers. In connection with its business operations, it also maintains a fertilizer manufacturing plant, warehouse and dock facilities at the Port of Guanica, Puerto Rico. At its dock [fol. 16] at Guanica, Puerto Rico it receives and unloads ships which bring materials necessary for its manufacturing operations. During the year 1958, it imported into the Commonwealth of Puerto Rico chemicals and other materials which were valued at in excess of \$4,000,000.00. During the same period, it exported from said Commonwealth fertilizers and other products valued at in excess of \$100,000.00. Its annual volume of business is in excess of \$8,000,000.00.

### III

Respondent Ochoa is, and at all times material herein has been, engaged in commerce within the meaning of Section 2, subsections (6) and (7) of the Act.

### IV

Respondent ILA Council and Respondent ILA Local 1762 are each labor organizations within the meaning of Section 2, subsection (5) of the Act.

### V

All parties hereto expressly waive a hearing, an Intermediate Report of a Trial Examiner, the filing of exceptions to such Intermediate Report, oral arguments before the Board, and all further and other proceedings to which Respondent Ochoa and the Respondents ILA Council and ILA Local 1762 may be entitled to under the Act or the Rules and Regulations of the Board. Respondent Ochoa hereby withdraws the Answer filed by it in Case 24-CA-1038 on March 17, 1959. Respondents ILA Council and ILA Local 1762 hereby withdraw the joint Answer filed by them in Case 24-CA-271 on March 16, 1959.



## VI

This stipulation together with the charges and amended charges, Affidavits of Service of said charges and amended charges, Order Consolidating Cases, Consolidated Complaint and Notice of Hearing and Affidavit of Service of [fol. 17] said Order Consolidating Cases Consolidated Complaint and Notice of Hearing, shall constitute the entire record herein and shall be filed with the Board.

## VII

Upon this Stipulation and the record herein, as set forth in paragraph VI above, and without any further notice of proceedings herein, the Board may enter an Order forthwith providing as follows:

### ORDER

Upon the entire record herein and pursuant to Section 10 (c) of the National Labor Relations Act, as amended, the National Labor Relations Board hereby orders that:

A. Respondent Ochoa Fertilizer Corporation, its officers, representatives, agents, successors and assigns, shall:

1. Cease and desist from:

(a) Performing, maintaining, or otherwise giving effect to any agreement, arrangement, practice or understanding with ILA Council and/or ILA Local 1762, or any other labor organization which in an unlawful manner, conditions employment or the retention of employment upon clearance or approval by the aforementioned labor organizations, or by any other labor organization.

(b) Performing, maintaining, or otherwise giving effect to any agreement, arrangement, practice, or understanding with ILA Council and/or ILA Local 1762, or any other labor organization which conditions employment or the retention of employment upon membership in the aforementioned labor organizations or any other labor organization, except as authorized by the proviso to Section 8 (a) (3) of the Act.

(c) Performing, maintaining, or giving effect to the unlawful union security provisions of its collective bargain-

ing agreement of July 19, 1951, as extended by the Stipulation Agreement of September 5, 1955 with ILA Council, or [fol. 18] entering into or enforcing any extension, renewal, modification or supplement thereof, or any superseding agreement with these unions containing union security provisions, except to the extent authorized by Section 8 (a) (3) of the Act.

(d) Encouraging membership in ILA Council and/or ILA Local 1762, or any other labor organization by discriminating in respect to the hire or tenure of employment or any terms or conditions of employment of its employees, including applicants for employment, except to the extent authorized in Section 8 (a) (3) of the Act.

(e) Recognizing the above-named labor organizations, or any successors thereto, as the representatives of the stevedores and related workers it employs at its dock operations located at the port of Guanica for the purpose of negotiating concerning grievances, labor disputes, wages, rates of pay, hours of employment, and other conditions of employment, unless and until said labor organizations, or any successors thereto, shall have demonstrated their exclusive majority representative status pursuant to a Board-conducted election among said stevedores and related workers employed by the Respondent Company at its dock operations located at the port of Guanica.

(f) Performing, maintaining, or otherwise giving effect to any agreement, arrangement, practice, or understanding with the above-named labor organizations, or any successors thereto, unless and until said labor organizations, or any successors thereto, shall have demonstrated their exclusive majority representative status pursuant to a Board-conducted election among the stevedores and related workers employed by the Respondent Company at its dock operations located at the port of Guanica.

[fol. 19] In like or related manner interfering with, restraining or coercing employees in the exercise of the rights guaranteed in Section 7 of the Act, except to the extent that such rights may be validly affected by an agreement, entered into in accordance with Section 8 (a) (3) of the Act, requiring membership in a labor organization as a condition of employment as authorized by said



section, as modified by the Labor Management Reporting and Disclosure Act of 1959.

2. Take the following affirmative action which the Board finds will effectuate the policies of the Act:

(a) Withdraw and withhold all recognition from the above-named labor organizations, or any successors thereto, as representatives of the stevedores and related workers it employs at its dock operations located at the port of Guanica for the purpose of negotiating concerning grievances, labor disputes, wages, rates of pay, hours of employment or other conditions of employment unless and until said labor organization, or any successors thereto, shall have demonstrated their exclusive majority representative status pursuant to a Board-conducted election among said stevedores and related workers employed by the Respondent Company at its dock operations located at the port of Guanica.

(b) Jointly and severally with Respondent Unions reimburse all of its present and former employees for any initiation fees, dues, assessments, or any other monies paid pursuant to its unlawful union security and/or hiring arrangements with Respondent Unions, provided, however, that this Order shall not be construed as requiring reimbursement for any such monies paid more than six months prior to the date of the original charges herein.

(c) Preserve and make available to the Board or its agents, upon request, for examination and copying, all [fol. 20] records, reports, and other documents necessary to analyze the amounts of monies due under the terms of this Order.

(d) Post in English and in Spanish at its business offices, copies of the Notice attached hereto as "Appendix A". Copies of said notice to be furnished by the Regional Director for the 24th Region shall, after being duly signed by an authorized representative of Respondent Ochoa, be posted by Respondent Ochoa immediately upon the receipt thereof, and be maintained by it for sixty (60) consecutive days thereafter in conspicuous places, including all places where notices to employees are customarily posted. Reasonable steps shall be taken by Respondent Ochoa to insure that said notices are not altered, defaced or covered by any other material.

(e) Notify the Regional Director for the 24th Region in writing within ten (10) days from the date of this Order of the steps taken to comply herewith.

B. Respondents International Longshoremen's Association, District Council of the Ports of Puerto Rico, ILA-Ind., and International Longshoremen's Association, Local 1762, DCPPR, ILA-Ind. (also known as Union de Estibadores de Guanica, IBL Sub-Local 1900), their officers, representatives, agents, successors and assigns, shall:

1. Cease and desist from:

(a) Performing, maintaining, or otherwise giving effect to any employment agreement, arrangement, practice or understanding with Ochoa Fertilizer Corporation, or any other employer, over which the Board will assert jurisdiction which, in an unlawful manner conditions employment or the retention of employment upon clearance or approval by ILA Council and/or ILA Local 1762 or any other labor organization.

(b) Performing, maintaining, or otherwise giving effect to any agreement, arrangement, practice or understanding [fol. 21] with Ochoa Fertilizer Corporation, or with any other employer, over which the Board will assert jurisdiction, which conditions employment or the retention of employment upon membership in ILA Council and/or ILA Local 1762 or any other labor organization except to the extent authorized by the proviso to Section 8 (a) (3) of the Act.

(c) Performing, maintaining, or giving effect to the unlawful union security provisions of its collective bargaining agreement of July 19, 1951, as extended by the stipulation agreement of September 5, 1955 with Ochoa Fertilizer Corporation, or entering into or enforcing any extension, renewal, modification or supplement thereof or any superseding agreement with this company containing union security provisions, except as authorized by the proviso to Section 8 (a) (3) of the Act.

(d) Causing or attempting to cause Ochoa Fertilizer Corporation or any other employer over which the Board will assert jurisdiction, to discharge or refuse to hire any

employee including any applicant for employment, or otherwise to discriminate against any employee in violation of Section 8 (a) (3) of the Act.

(e) In like or related manner, restraining or coercing employees in the exercise of the rights under Section 7 of the Act, except to the extent that such rights may be validly affected by an agreement entered into, in accordance with Section 8 (a) (3) of the Act, requiring membership in a labor organization as a condition of employment as authorized by said Section, as modified by the Labor Management Reporting and Disclosure Act of 1959.

2. Take the following affirmative action which the Board finds will effectuate the policies of the Act:

(a) Jointly and severally with Respondent Ochoa reimburse all present and former employees of Respondent Ochoa for all initiation fees, dues, assessments, or any other monies paid pursuant to its unlawful union security [fol. 22] and/or hiring arrangements with Respondent Ochoa, provided, however, that this Order shall not be construed as requiring reimbursement for any such monies paid more than six months prior to the date of the original charges herein.

(b) Preserve and make available to the Board, or its agents, upon request, for examination and copying all records, reports and other documents necessary to analyze the amounts of monies due under the terms of this Order.

(c) Post in English and in Spanish, at its business offices and meeting halls, copies of the Notice attached hereto as Appendix "B". Copies of said notice to be furnished by the Regional Director for the 24th Region shall, after being duly signed by an authorized representative of Respondents ILA Council and ILA Local 1762, be posted by them immediately upon the receipt thereto and be maintained by them for sixty (60) consecutive days thereafter in conspicuous places, including all places where notices to their members are customarily posted. Reasonable steps shall be taken by Respondents to insure that said notices are not altered, defaced or covered by any other material.

(d) Mail to the Regional Director for the 24th Region signed copies of the notice attached hereto as Appendix

**"B" for posting at the offices of Ochoa Fertilizer Corporation in places where notices to the Company's employees are customarily posted.**

**(e) Notify the Regional Director for the 24th Region in writing within ten (10) days from the date of this Order what steps it has taken to comply herewith.**

[fol. 23]

## VIII

**It is further stipulated and agreed that any United States Court of Appeals for any appropriate circuit may on application by the Board, enter a decree enforcing the Order of the Board in the form set forth in Paragraph VII above. Respondents waive all defenses to the entry of the decree, including alleged compliance with the Order of the Board and their rights to receive notices of the filing of an application for an entry of said decree, provided that such decree is in the words and figures of the Order set forth in Paragraph VII above. However, Respondents are required to comply with the affirmative provisions of the Board Order after the entry of the decree only to the extent that they have not already done so.**

## IX

**This Stipulation contains the entire agreement between the parties, there being no agreement or understanding of any kind, oral or otherwise, which varies, alters, or adds to this Stipulation.**

## X

**This Stipulation is subject to the approval of the National Labor Relations Board and it is of no force and effect unless and until the Board has approved the same. Upon the Board's approval of this Stipulation, the Respondents will immediately comply with the provisions of the Order set forth in paragraph VII above.**

Signed at Santurce, Puerto Rico, this 29 day of January, 1960.

**INTERNATIONAL LONGSHOREMEN'S ASSOC.  
DISTRICT COUNCIL OF THE PORTS OF  
P. R. ILA-IND., and INTERNATIONAL  
LONGSHOREMEN'S ASSOCIATION, LOCAL  
1762 DCPPR, ILA-Ind. (also known as  
Union de Estibadores de Guanica,  
IBL Sub-Local 1900)**

**By /s/ Jose Aulet, Attorney**

**OCHOA FERTILIZER CORPORATION**

**By /s/ Hernan R. Franco, Attorney**

**/s/ Juan Padilla Torres  
Charging Party**

**Approval by the General Counsel  
recommended:**

**/s/ Luis D. Miranda  
Attorney, 24th Region  
National Labor Relations Board  
Box 9176, Santurce, P.R.**

**Date Feb. 1/1960**

**Approved:**

**William T. Ashley  
Office of the General Counsel  
National Labor Relations Board  
Washington 25, D.C.**

**Date Feb. 5 1960**

[fol. 25]

## APPENDIX "A" TO STIPULATION

## PROPOSED NOTICE TO ALL EMPLOYEES

OF

## OCHOA FERTILIZER CORPORATION

## PURSUANT TO

a Decision and Order of the National Labor Relations Board based upon a Stipulation providing for a consent decree in an appropriate circuit of the United States Court of Appeals, and in order to effectuate the policies of the National Labor Relations Act, as amended, we hereby notify you that:

**WE WILL NOT** perform, maintain, or otherwise give effect to any agreement, arrangement, practice or understanding with International Longshoremen's Association, District Council of the Ports of P.R., ILA-Ind., and/or International Longshoremen's Association, Local 1762, DCPPR, ILA-Ind. (also known as Union de Estibadores de Guanica, IBL Sub-Local 1900) or any other labor organization which, in an unlawful manner, conditions employment or the retention of employment upon clearance or approval by the aforementioned labor organizations or by any other labor organization.

**WE WILL NOT** perform, maintain, or otherwise give effect to any agreement, arrangement, practice or understanding with the above-mentioned labor organizations, or any other labor organization which conditions employment or the retention of employment upon membership in the aforementioned labor organizations or any other labor organization, except as authorized by the proviso to Section 8 (a) (3) of the Act.

**WE WILL NOT** perform, maintain, or give effect to the unlawful union security provisions of the collective bargaining agreement of July 19, 1951, as extended by the Stipulation Agreement of September 5, 1955 with International Longshoremen's Association, Dis-



strict Council of the Ports of P.R. ILA-Ind. or enter into or enforce any extension, renewal, modification or supplement thereof, or any superseding agreement with these unions containing union security provisions, except to the extent authorized by Section 8 (a) (3) of the Act.

**WE WILL NOT** encourage membership in the above-mentioned labor organizations, or any other labor organization by discriminating in respect to the hire or tenure of employment or any terms or conditions of employment of its employees, including applicants for employment except to the extent authorized in Section 8 (a) (3) of the Act.

[fol. 26] **WE WILL NOT** recognize the above-named labor organizations, or any successors thereto, as the representatives of the stevedores and related workers we employ at our dock operations located at the port of Guanica for the purpose of negotiating, concerning grievances, labor disputes, wages, rates of pay, hours of employment, or other conditions of employment, unless and until said labor organizations, or any successors thereto, shall have demonstrated their exclusive majority representative status pursuant to a Board-conducted election among said stevedores and related workers we employ at said dock operations located at the port of Guanica.

**WE WILL NOT** perform, maintain, or otherwise give effect to any agreement, arrangement, practice, or understanding, with the above-named labor organizations, or any successors thereto, unless and until said labor organizations, or any successors thereto, shall have demonstrated their exclusive majority representative status pursuant to a Board-conducted election among the stevedores and related workers employed by us at our dock operations located at the port of Guanica.

**WE WILL NOT** in any like or related manner, restrain or coerce employees in the exercise of the rights under Section 7 of the Act, except to the extent that such rights may be validly affected by an agreement

entered into, in accordance with Section 8 (a) (3) of the Act, requiring membership in a labor organization as a condition of employment as authorized by said section, as modified by the Labor Management Reporting and Disclosure Act of 1959.

**WE WILL** withhold and withdraw all recognition from International Longshoremen's Association, District Council of the Ports of P.R. ILA-Ind., and International Longshoremen's Association, Local 1762, DC-PPR, ILA-Ind., or any successors thereto, as representatives of the stevedores and related workers we employ at our dock operations located at the port of Guanica for the purpose of negotiating concerning grievances, labor disputes, wages, rates of pay, hours of employment, and other conditions of employment unless and until said labor organizations, or any successors thereto, shall have demonstrated their exclusive majority representative status pursuant to a Board-conducted election among said stevedores and related workers we employ at our dock operations located at the port of Guanica.

**WE WILL** jointly and severally with the International Longshoremen's Association, District Council of the Ports of P.R., ILA-Ind. and International Longshoremen's Association, Local 1762, DCPPR, ILA-Ind. (also known as Union de Estibadores de Guanica, IBL Sub-Local 1900) reimburse all of our present and former [fol. 27] employees for any initiation fees, dues, assessments, or any other monies paid pursuant to our unlawful union security and/or hiring arrangements with the aforementioned labor organizations, provided, however, that this obligation shall not be construed as requiring reimbursement for any such monies paid prior to December 26, 1957.

OCHOA FERTILIZER CORPORATION

Date: \_\_\_\_\_ By \_\_\_\_\_

---

This notice must remain posted for sixty (60) consecutive days from the date hereof and must not be altered, defaced or covered with any other material.



[fol. 28]      APPENDIX "B" TO STIPULATION

PROPOSED NOTICE TO ALL MEMBERS

OF

INTERNATIONAL LONGSHOREMEN'S ASSOCIATION  
DISTRICT COUNCIL OF THE PORTS OF P.R., ILA-IND

and

INTERNATIONAL LONGSHOREMEN'S ASSOCIATION, LOCAL 1762  
DCPPB, ILA-IND. (also known as Union de Estibadores  
de Guanica, IBL Sub-Local 1900)

PURSUANT TO

a Decision and Order of the National Labor Relations Board based upon a Stipulation providing for a consent decree in an appropriate circuit of the United States Court of Appeals, and in order to effectuate the policies of the National Labor Relations Act, as amended, we hereby notify you that:

**WE WILL NOT** perform, maintain, or otherwise give effect to any employment agreement, arrangement, practice or understanding with Ochoa Fertilizer Corporation, or any other employer, over which the National Labor Relations Board will assert jurisdiction which, in an unlawful manner, conditions employment or the retention of employment upon clearance or approval by us, or any other labor organization.

**WE WILL NOT** perform, maintain, or otherwise give effect to any agreement, arrangement, practice or understanding with Ochoa Fertilizer Corporation or with any other employer, over which the National Labor Relations Board will assert jurisdiction, which conditions employment or the retention of employment upon membership in our organizations, or any other labor organization except to the extent authorized by the proviso to Section 8 (a) (3) of the Act.

**WE WILL NOT** perform, maintain, or give effect to the unlawful union security provisions of the collective bargaining agreement of July 19, 1951 as extended by the Stipulation Agreement of September 5, 1955, with Ochoa Fertilizer Corporation, or enter into or enforce any extension, renewal, modification or supplement thereof or any superseding agreement with Ochoa Fertilizer Corporation containing union security provisions, except as authorized by the proviso to Section 8 (a) (3) of the Act.

**WE WILL NOT** cause or attempt to cause Ochoa Fertilizer Corporation or any other employer over which the National Labor Relations Board will assert jurisdiction, to discharge or refuse to hire any employee, including any applicant for employment, or otherwise to discriminate against any employee in violation of Section 8 (a) (3) of the Act.

[fol. 29] **WE WILL NOT** in any like or related manner restrain or coerce employees in the exercise of the rights guaranteed in Section 7 of the Act, except to the extent that such rights may be validly affected by an agreement, entered into in accordance with Section 8 (a) (3) of the Act, requiring membership in a labor organization as a condition of employment as authorized by said section, as modified by the Labor Management Reporting and Disclosure Act of 1959.

**WE WILL** jointly and severally with Ochoa Fertilizer Corporation reimburse all present and former employees of Ochoa Fertilizer Corporation for all initiation fees, dues, assessments, or any other monies paid pursuant to our unlawful union security and/or hiring arrangements with Ochoa Fertilizer Corporation, provided, however, that this obligation shall not be con-

strued as requiring reimbursement for any such monies paid prior to December 26, 1957.

INTERNATIONAL LONGSHOREMEN'S ASSOC.  
DISTRICT COUNCIL OF THE PORTS OF  
P.R., ILA-Ind., and  
INTERNATIONAL LONGSHOREMEN'S ASSOC.  
LOCAL 1762, DCPPR, ILA-IND. (also  
known as Union de Estibadores de  
Guanica, IBL Sub-Local 1900)

Date: ..... By .....

---

This notice must remain posted for sixty (60) consecutive days from the date hereof and must not be altered, defaced or covered with any other material.

[fol. 30]                      BEFORE THE  
NATIONAL LABOR RELATIONS BOARD

Case No. 24-CA-1038

OCHOA FERTILIZER CORPORATION

and

JUAN PADILLA TORRES

and

INTERNATIONAL LONGSHOREMEN'S ASSOC. DISTRICT COUNCIL  
OF THE PORTS OF P.R., ILA-IND., and INTERNATIONAL  
LONGSHOREMEN'S ASSOCIATION, LOCAL 1762, DCPPR, ILA-  
IND., (also known as UNION DE ESTIBADORES DE GUANICA,  
IBL-SUB LOCAL 1900)

Parties to the Contract

Case No. 24-CB-271

INTERNATIONAL LONGSHOREMEN'S ASSOC. DISTRICT COUNCIL  
OF THE PORTS OF P.R., ILA-IND., and INTERNATIONAL  
LONGSHOREMEN'S ASSOCIATION, LOCAL 1762 DCPPR, ILA-  
IND. (also known as UNION DE ESTIBADORES DE GUANICA,  
SUB-LOCAL 1900)

and

JUAN PADILLA TORRES

and

OCHOA FERTILIZER CORPORATION

Party to the Contract

DECISION AND ORDER—March 16, 1960

Statement of the Cases

On February 1, 1960, Ochoa Fertilizer Corporation,  
herein called Respondent Ochoa; International Longshore-  
men's Association, District Council of the Ports of Puerto

Rico, ILA-Ind., and International Longshoremen's Association, Local 1762, DCPPR, ILA-Ind. (also known as Union de Estibadores de Guanica, IBL Sub-local 1900), herein called individually Respondent ILA Council and Respondent ILA Local 1762 respectively and collectively called Respondent Unions; Juan Padilla Torres, the Charging Party herein; and the General Counsel of the National Labor Relations Board, herein called the Board, entered into a Stipulation, in settlement of the cases, subject to approval of the Board, providing for the entry of a consent order by the Board, and a consent decree by any appropriate United States Court of Appeals. The parties waived all further and other procedure before the Board to which the Respondents may be entitled under the Act, and the Rules and Regulations of the Board, and Respondents waived their right to contest the entry of a consent decree or to receive further notice of the application therefor.

The aforesaid Stipulation is hereby approved and made a part of the record herein, and the proceeding is hereby transferred to and continued before the Board for the entry of a Decision and Order pursuant to the provisions of the said Stipulation.

[fol. 31] Pursuant to the provisions of Section 3 (b) of the Act, the Board has delegated its powers in connection with this proceeding to a three-member panel.

Upon the basis of the aforesaid Stipulation and the entire record in the cases, the Board makes the following:

### Findings of Fact

#### 1. The business of Respondent Ochoa

Ochoa Fertilizer Corporation, a Puerto Rico corporation with its principal place of business and plant located at Hato Rey, Puerto Rico, is engaged in the manufacture of chemical fertilizer. In connection with its business operations it also maintains a fertilizer manufacturing plant, warehouse and dock facilities at the Port of Guanica, Puerto Rico. At its dock at Guanica, Puerto Rico, it receives and unloads ships which bring materials necessary for its manufacturing operations. During the year 1958,

it imported into the Commonwealth of Puerto Rico chemicals and other materials which were valued at in excess of \$4,000,000.00. During the same period, it exported from the said Commonwealth fertilizers and other products valued at in excess of \$100,000.00. Its annual volume of business is in excess of \$8,000,000.00. Ochoa Fertilizer admits, and we find, that it is engaged in commerce within the meaning of the Act.

## 2. The labor organizations involved

International Longshoremen's Association, District Council of the Ports of Puerto Rico, ILA-Ind., and International Longshoremen's Association Local 1762, DCPPR, ILA-Ind. (also known as Union de Estibadores de Guanica, IBL, Sub-local 1900) are labor organizations within the meaning of Section 2 (5) of the Act.

## ORDER

Upon the basis of the above findings of fact, the Stipulation and the entire record in the cases, and pursuant to Section 10 (c) of the National Labor Relations Act, the National Labor Relations Board hereby orders that:

A. Respondent Ochoa Fertilizer Corporation, its officers, representatives, agents, successors and assigns shall:

### 1. Cease and desist from:

(a) Performing, maintaining, or otherwise giving effect to any agreement, arrangement, practice or understanding with ILA Council and/or ILA Local 1762, or any other labor organization which in an unlawful manner, conditions employment or the retention of employment upon clearance or approval by the aforementioned labor organizations, or by any other labor organization.

(b) Performing, maintaining, or otherwise giving effect to any agreement, arrangement, practice, or understanding with ILA Council, and/or ILA Local 1762, or any other labor organization which conditions employment or the retention of employment upon membership in the aforementioned labor organizations, or any other labor organization, except as authorized by the proviso to Section 8 (a)(3) of the Act.



[fol. 32] (c) Performing, maintaining, or giving effect to the unlawful union security provisions of its collective bargaining agreement of July 19, 1951, as extended by the Stipulation Agreement of September 5, 1955 with ILA Council, or entering into or enforcing any extension, renewal, modification or supplement thereof, or any superseding agreement with these unions containing union security provisions, except to the extent authorized by Section 8 (a)(3) of the Act.

(d) Encouraging membership in ILA Council and/or ILA Local 1762, or any other labor organization by discriminating in respect to the hire or tenure of employment or any terms or conditions of employment of its employees, including applicants for employment, except to the extent authorized in Section 8 (a)(3) of the Act.

(e) Recognizing the above-named labor organizations, or any successors thereto, as the representatives of the stevedores and related workers it employs at its dock operations located at the port of Guanica for the purpose of negotiating concerning grievances, labor disputes, wages, rates of pay, hours of employment, and other conditions of employment, unless and until said labor organizations, or any successors thereto, shall have demonstrated their exclusive majority representative status pursuant to a Board-conducted election among said stevedores and related workers employed by the Respondent Company at its dock operations located at the port of Guanica.

(f) Performing, maintaining, or otherwise giving effect to any agreement, arrangement, practice, or understanding with the above-named labor organizations, or any successors thereto, unless and until said labor organizations, or any successors thereto, shall have demonstrated their exclusive majority representative status pursuant to a Board-conducted election among the stevedores and related workers employed by the Respondent Company at its dock operations located at the port of Guanica.

(g) In like or related manner interfering with, restraining or coercing employees in the exercise of the rights guaranteed in Section 7 of the Act, except to the extent that such rights may be validly affected by an

agreement, entered into in accordance with Section 8 (a)(3) of the Act, requiring membership in a labor organization as a condition of employment as authorized by said section, as modified by the Labor Management Reporting and Disclosure Act of 1959.

2. Take the following affirmative action which the Board finds will effectuate the policies of the Act:

(a) Withdraw and withhold all recognition from the above-named labor organizations, or any successors thereto, as representatives of the stevedores and related workers it employs at its dock operations located at the port of Guanica for the purpose of negotiating concerning grievances, labor disputes, wages, rates of pay, hours of employment or other conditions of employment unless and until said labor organizations, or any successors thereto, shall have demonstrated their exclusive majority representative status pursuant to a Board-conducted election among said stevedores and related workers employed by the Respondent Company at its dock operations located at the port of Guanica.

[fol. 33] (b) Jointly and severally with Respondent Unions reimburse all of its present and former employees for any initiation fees, dues, assessments, or any other monies paid pursuant to its unlawful union security and/or hiring arrangements with Respondent Unions, provided, however, that this Order shall not be construed as requiring reimbursement for any such monies paid more than six months prior to the date of the original charges herein.

(c) Preserve and make available to the Board or its agents, upon request, for examination and copying, all records, reports and other documents necessary to analyze the amounts of monies due under the terms of this Order.

(d) Post in English and in Spanish at its business offices, copies of the Notice attached hereto as "Appendix A". Copies of said notice to be furnished by the Regional Director for the 24th Region shall, after being duly signed by an authorized representative of Respondent Ochoa, be posted by Respondent Ochoa immediately upon the re-

ceipt thereof, and be maintained by it for sixty (60) consecutive days thereafter in conspicuous places, including all places where notices to employees are customarily posted. Reasonable steps shall be taken by Respondent Ochoa to insure that said notices are not altered, defaced or covered by any other material.

(e) Notify the Regional Director for the 24th Region in writing within ten (10) days from the date of this Order of the steps taken to comply herewith.

B. Respondents International Longshoremen's Association, District Council of the Ports of Puerto Rico, ILA-Ind., and International Longshoremen's Association, Local 1762, DCPPR, ILA-Ind. (Also known as Union de Estibadores de Guanica, IBL Sub-Local 1900), their officers, representatives, agents, successors and assigns shall:

1. Cease and desist from:

(a) Performing, maintaining, or otherwise giving effect to any employment agreement, arrangement, practice or understanding with Ochoa Fertilizer Corporation, or any other employer, over which the Board will assert jurisdiction which, in an unlawful manner conditions employment or the retention of employment upon clearance or approval by ILA Council and/or ILA Local 1762 or any other labor organization.

(b) Performing, maintaining, or otherwise giving effect to any agreement, arrangement, practice or understanding with Ochoa Fertilizer Corporation, or with any other employer, over which the Board will assert jurisdiction which conditions employment or the retention of employment upon membership in ILA Council and/or ILA Local 1762 or any other labor organization except to the extent authorized by the proviso to Section 8 (a)(3) of the Act.

(c) Performing, maintaining, or giving effect to the unlawful union security provisions of its collective bargaining agreement of July 19, 1951, as extended by the stipulation agreement of September 5, 1955 with Ochoa Fertilizer Corporation, or entering into or enforcing any extension, renewal, modification or supplement thereof or any superseding agreement with this company containing union security provisions, except as authorized by the proviso to Section 8 (a)(3) of the Act.

[fol. 34] (d) Causing or attempting to cause Ochoa Fertilizer Corporation or any other employer over which the Board will assert jurisdiction, to discharge or refuse to hire any employee including any applicant for employment, or otherwise to discriminate against any employee in violation of Section 8 (a)(3) of the Act.

(e) In like or related manner, restraining or coercing employees in the exercise of the rights under Section 7 of the Act, except to the extent that such rights may be validly affected by an agreement entered into, in accordance with Section 8 (a)(3) of the Act, requiring membership in a labor organization as a condition of employment as authorized by said Section, as modified by the Labor Management Reporting and Disclosure Act of 1959.

2. Take the following affirmative action which the Board finds will effectuate the policies of the Act:

(a) Jointly and severally with Respondent Ochoa reimburse all present and former employees of Respondent Ochoa for all initiation fees, dues, assessments, or any other monies paid pursuant to its unlawful union security and/or hiring arrangements with Respondent Ochoa, provided, however, that this Order shall not be construed as requiring reimbursement for any such monies paid more than six months prior to the date of the original charges herein.

(b) Preserve and make available to the Board, or its agents, upon request, for examination and copying all records, reports and other documents necessary to analyze the amounts of monies due under the terms of this Order.

(c) Post in English and in Spanish, at its business offices and meeting halls, copies of the Notice attached hereto as Appendix "B". Copies of said notice to be furnished by the Regional Director for the 24th Region shall, after being duly signed by an authorized representative of Respondents ILA Council and ILA Local 1762, be posted by them immediately upon the receipt thereto and be maintained by them for sixty (60) consecutive days thereafter in conspicuous places, including all places

where notices to their members are customarily posted. Reasonable steps shall be taken by Respondents to insure that said notices are not altered, defaced or covered by any other material.

(d) Mail to the Regional Director for the 24th Region signed copies of the notice attached hereto as Appendix "B" for posting at the offices of Ochoa Fertilizer Corporation in places where notices to the Company's employees are customarily posted.

(e) Notify the Regional Director for the Twenty-fourth Region, in writing, with ten (10) days from the date of this Order, what steps Respondents have taken to comply herewith.

Dated, Washington, D. C. Mar 16 1960

Boyd Leedom, Chairman  
Stephen S. Bean, Member  
John H. Fanning Member  
NATIONAL LABOR RELATIONS BOARD

(SEAL)



[fol. 35] APPENDIX "A" TO DECISION AND ORDER

**NOTICE TO ALL EMPLOYEES**  
**OF**  
**OCHOA FERTILIZER CORPORATION**

**PURSUANT TO**

a Decision and Order of the National Labor Relations Board based upon a Stipulation providing for a consent decree in an appropriate circuit of the United States Court of Appeals, and in order to effectuate the policies of the National Labor Relations Act, as amended, we hereby notify you that:

**WE WILL NOT** perform, maintain, or otherwise give effect to any agreement, arrangement, practice or understanding with International Longshoremen's Association, District Council of the Ports of P.R., ILA-Ind., and/or International Longshoremen's Association, Local 1762, DCPPR, ILA-Ind. (also known as Union de Estibadores de Guanica, IBL Sub-Local 1900) or any other labor organization which, in an unlawful manner, conditions employment or the retention of employment upon clearance or approval by the aforementioned labor organization or by any other labor organization.

**WE WILL NOT** perform, maintain, or otherwise give effect to any agreement, arrangement, practice or understanding with the above-mentioned labor organizations, or any other labor organization which conditions employment or the retention of employment upon membership in the aforementioned labor organizations or any other labor organization, except as authorized by the proviso to Section 8 (a)(3) of the Act.

**WE WILL NOT** perform, maintain, or give effect to the unlawful union security provisions of the collective bargaining agreement of July 19, 1951, as extended by the Stipulation Agreement of September 5, 1955



with International Longshoremen's Association, District Council of the Ports of P.R. ILA-Ind. or enter into or enforce any extension, renewal, modification or supplement thereof, or any superseding agreement with these unions containing union security provisions, except to the extent authorized by Section 8 (a)(3) of the Act.

WE WILL NOT encourage membership in the above-mentioned labor organizations, or any other labor organization by discriminating in respect to the hire or tenure of employment or any terms or conditions of employment of its employees, including applicants for employment except to the extent authorized in Section 8 (a)(3) of the Act.

WE WILL NOT recognize the above-named labor organizations, or any successors thereto, as the representatives of the stevedores and related workers we employ at our dock operations located at the port of Guanica for the purpose of negotiating concerning grievances, labor disputes, wages, rates of pay, hours of employment, or other conditions of employment, unless and until said labor organizations, or any successors thereto, shall have demonstrated their exclusive majority representative status pursuant to a Board-conducted election among said stevedores and related workers we employ at said dock operations located at the port of Guanica.

[fol. 36] WE WILL NOT perform, maintain, or otherwise give effect to any agreement, arrangement, practice, or understanding, with the above-named labor organizations, or any successors thereto, unless and until said labor organizations, or any successors thereto, shall have demonstrated their exclusive majority representative status pursuant to a Board-conducted election among the stevedores and related workers employed by us at our dock operations located at the port of Guanica.

WE WILL NOT in any like or related manner, restrain or coerce employees in the exercise of the rights under Section 7 of the Act, except to the extent

that such rights may be validly affected by an agreement entered into, in accordance with Section 8 (a) (3) of the Act, requiring membership in a labor organization as a condition of employment as authorized by said section, as modified by the Labor Management Reporting and Disclosure Act of 1959.

WE WILL withhold and withdraw all recognition from International Longshoremen's Association, District Council of the Ports of P.R. ILA-Ind., and International Longshoremen's Association, Local 1762, DCPPR, ILA-Ind., or any successors thereto, as representatives of the stevedores and related workers we employ at our dock operations located at the port of Guanica for the purpose of negotiating concerning grievances, labor disputes, wages, rates of pay, hours of employment, and other conditions of employment unless and until said labor organizations, or any successors thereto, shall have demonstrated their exclusive majority representative status pursuant to a Board-conducted election among said stevedores and related workers we employ at our dock operations located at the port of Guanica.

WE WILL jointly and severally with the International Longshoremen's Association, District Council of the Ports of P.R., ILA-Ind. and International Longshoremen's Association, Local 1762, DCPPR, ILA-Ind. (also known as Union de Estibadores de Guanica, IBL Sub-Local 1900) reimburse all of our present and former employees for any initiation fees, dues, assessments, or any other monies paid pursuant to our unlawful union security and/or hiring arrangements with the aforementioned labor organizations, provided, however, that this obligation shall not be construed as requiring reimbursement for any such monies paid prior to December 26, 1957.

OCHOA FERTILIZER CORPORATION

Date

By

This notice must remain posted for sixty (60) consecutive days from the date hereof and must not be altered, defaced or covered with any other material.

## [fol. 37] APPENDIX "B" TO DECISION AND ORDER

## NOTICE TO ALL MEMBERS

OF

INTERNATIONAL LONGSHOREMEN'S ASSOCIATION  
DISTRICT COUNCIL OF THE PORTS OF P. R., ILA-IND  
andINTERNATIONAL LONGSHOREMEN'S ASSOCIATION, LOCAL 1762  
DCPPR, ILA-IND. (also known as Union de Estibadores  
de Guanica, IBL Sub-Local 1900)

## PURSUANT TO

a Decision and Order of the National Labor Relations Board based upon a Stipulation providing for a consent decree in an appropriate circuit of the United States Court of Appeals, and an order to effectuate the policies of the National Labor Relations Act, as amended, we hereby notify you that:

**WE WILL NOT** perform, maintain, or otherwise give effect to any employment agreement, arrangement, practice or understanding with Ochoa Fertilizer Corporation, or any other employer, over which the National Labor Relations Board will assert jurisdiction which, in an unlawful manner, conditions employment or the retention of employment upon clearance or approval by us, or any other labor organization.

**WE WILL NOT** perform, maintain, or otherwise give effect to any agreement, arrangement, practice or understanding with Ochoa Fertilizer Corporation or with any other employer, over which the National Labor Relations Board will assert jurisdiction, which conditions employment or the retention of employment upon membership in our organizations, or any other labor organization except to the extent authorized by the proviso to Section 8 (a)(3) of the Act.

**WE WILL NOT** perform, maintain, or give effect to the unlawful union security provisions of the collective bargaining agreement of July 19, 1951 as extended by the Stipulation Agreement of September 5, 1955, with Ochoa Fertilizer Corporation, or enter

into or enforce any extension, renewal, modification or supplement thereof or any superseding agreement with Ochoa Fertilizer Corporation containing union security provisions, except as authorized by the proviso to Section 8 (a)(3) of the Act.

**WE WILL NOT** cause or attempt to cause Ochoa Fertilizer Corporation or any other employer over which the National Labor Relations Board will assert jurisdiction, to discharge or refuse to hire any employee, including any applicant for employment, or otherwise to discriminate against any employee in violation of Section 8 (a)(3) of the Act.

**WE WILL NOT** in any like or related manner restrain or coerce employees in the exercise of the rights guaranteed in Section 7 of the Act, except to the extent that such rights may be validly affected by an agreement, entered into in accordance with Section 8 (a)(3) of the Act, requiring membership in a labor organization as a condition of employment as authorized by said section, as modified by the Labor Management Reporting and Disclosure Act of 1959.

[fol. 38] **WE WILL** jointly and severally with Ochoa Fertilizer Corporation reimburse all present and former employees of Ochoa Fertilizer Corporation for all initiation fees, dues, assessments, or any other monies paid pursuant to our unlawful union security and/or hiring arrangements with Ochoa Fertilizer Corporation, provided, however, that this obligation shall not be construed as requiring reimbursement for any such monies paid prior to December 26, 1957.

INTERNATIONAL LONGSHOREMEN'S ASSOC.  
DISTRICT COUNCIL OF THE PORTS OF  
P.R., ILA-Ind., and  
INTERNATIONAL LONGSHOREMEN'S ASSOC.  
LOCAL 1762, DCPPR, ILA-IND. (also  
known as Union de Estibadores de  
Guanica, IBL Sub-Local 1900)

Date \_\_\_\_\_

By \_\_\_\_\_

This notice must remain posted for sixty (60) consecutive days from the date hereof and must not be altered, defaced or covered with any other material.

[fol. 39] IN UNITED STATES COURT OF  
APPEALS FOR THE FIRST CIRCUIT

NATIONAL LABOR RELATIONS BOARD, PETITIONER,

v.

OCHOA FERTILIZER CORPORATION; INTERNATIONAL LONGSHOREMEN'S ASSOCIATION, DISTRICT COUNCIL OF THE PORTS OF PUERTO RICO, ILA-IND., and INTERNATIONAL LONGSHOREMEN'S ASSOCIATION, LOCAL 1762, DCPPR, ILA-IND. (Also known as UNION DE ESTIBADORES DE GUANICA, IBL SUB-LOCAL 1900), RESPONDENTS.

PETITION FOR ENFORCEMENT OF AN ORDER OF  
THE NATIONAL LABOR RELATIONS BOARD

UPON STIPULATION OF THE PARTIES FOR CONSENT DECREE—  
Filed in Court of Appeals on June 15, 1960.

To the Honorable, the Judges of the United States  
Court of Appeals for the First Circuit:

The National Labor Relations Board, pursuant to the National Labor Relations Act, as amended (61 Stat. 136, 29 U. S. C., Secs. 151, et seq., as amended by 73 Stat. 519), hereinafter called the Act, respectfully petitions this Court for the enforcement of its order dated March 16, 1960. The proceeding resulting in said Order is known upon the records of the Board as Case Nos. 24-CA-1038 and 24-CB-271.

In support of this petition the Board respectfully shows:

(1) Respondent Ochoa Fertilizer Corporation (hereinafter called Respondent Ochoa) is engaged in business in Puerto Rico and Respondents International Longshoremen's Association, District Council of the Ports of Puerto Rico, ILA-Ind., and International Longshoremen's Association, Local 1762, DCPPR, ILA-Ind. (Also known as [fol. 40] Union de Estibadores de Guanica, IBL Sub-Local 1900), (hereinafter called individually Respondent ILA Council and Respondent ILA Local 1762 respectively and collectively called Respondent Unions) are a labor



organization engaged in promoting and protecting the interests of their members in Puerto Rico, all within this judicial circuit. This Court therefore has jurisdiction of this petition by Section 10(e) of the National Labor Relations Act, as amended.

(2) Upon all proceedings had in said matter before the Board as more fully shown by the record thereof certified by the Board and filed with this Court herein, to which reference is hereby made, the Board on March 16, 1960, duly stated its findings of fact and issued an order directed to Respondents, their respective officers, representatives, agents, successors and assigns.

(3) Said Order was entered by the Board pursuant to a stipulation dated February 1, 1960, wherein Respondents agreed that the Board might enter an order, the form of which was set forth in the said stipulation. The order thereafter entered by the Board does not vary in any particular form that agreed to in the aforesaid stipulation. The stipulation further provided as follows:

It is further stipulated and agreed that any United States Court of Appeals for any appropriate circuit may on application by the Board, enter a decree enforcing the Order of the Board in the form set forth . . . Respondents waive all defenses to the entry of the decree, including alleged compliance with the Order of the Board and their rights to receive notices of the filing of an application for an entry of said decree, provided that such decree is in the words and figures of the Order set forth . . . However, Respondents are required to comply with the affirmative provisions of the Board Order after the entry of the decree only to the extent that they have not already done so.

(4) On March 16, 1960, the Board's Decision and Order was served upon Respondents by sending copies thereof postpaid, bearing Government frank, to Respondents' Counsel.

[fol. 41] (5) Pursuant to Section 10 (e) of the National Labor Relations Act, as amended, the Board is certifying and filing with this Court the record of the proceeding



before the Board including the pleadings, stipulation, findings of fact and order of the Board.

WHEREFORE, the Board prays this Honorable Court that it cause notice of the filing of this petition and record to be served upon Respondents and that this Court take jurisdiction of the proceeding and of the questions determined therein and make and enter upon the stipulation referred to in paragraph (3) hereof, and the order made thereupon, a decree enforcing in whole said order of the Board and requiring Respondent Ochoa and Respondent Unions, their respective officers, representatives, agents, successors and assigns to comply therewith.

/s/ Marcel Mallet-Prevost  
Assistant General Counsel  
NATIONAL LABOR RELATIONS BOARD

Dated at Washington, D. C.  
this 14 day of June, 1960.

[fol. 42]

IN THE  
UNITED STATES COURT OF APPEALS

SUBMISSION—June 27, 1960

On June 27, 1960, this cause was submitted upon the petition of the National Labor Relations Board to Honorable Peter Woodbury, Chief Judge, and Honorable John P. Hartigan and Honorable Bailey Aldrich, Circuit Judges.

---

[fol. 43] IN UNITED STATES COURT OF  
APPEALS FOR THE FIRST CIRCUIT

5698.

NATIONAL LABOR RELATIONS BOARD, PETITIONER,

v.

OCHOA FERTILIZER CORPORATION, ET AL., RESPONDENTS.

DECREE.—July 8, 1960.

This cause was submitted on "Petition for Enforcement of an Order of the National Labor Relations Board upon Stipulation of the Parties for Consent Decree", and the record of proceedings before said Board.

Upon consideration whereof, It is ordered and decreed as follows: The order of the National Labor Relations Board of March 16, 1960, as modified herein, and with the exception of paragraphs A 2(e) and B 2(e), is hereby affirmed and enforced.

Paragraph A 1(a) of said order is modified by striking therefrom the words "or any other labor organization" and "or by any other labor organization".

Paragraph A 1(b) of said order is modified by striking therefrom the words "or any other labor organization" as they appeared twice therein.

Paragraph A 1(d) is modified by striking therefrom the words "or any other labor organization".

Paragraph B 1(a) of said order is modified by striking therefrom the words "or any other employer, over which the Board will assert jurisdiction".

Paragraph B 1(b) of said order is modified by striking therefrom the words "or with any other employer, over which the Board will assert jurisdiction,".

[fol. 44] Paragraph B 1(d) of said order is modified by striking therefrom the words "or any other employer over which the Board will assert jurisdiction,".

The first indented paragraph of the notice appended to said order as Appendix "A" is modified by striking there-

from the words "or any other labor organization" and "or by any other labor organization".

The second indented paragraph of the notice appended to said order as Appendix "A" is modified by striking therefrom the words "or any other labor organization" as they appeared twice therein.

The fourth indented paragraph of the notice appended to said order as Appendix "A" is modified by striking therefrom the words "or any other labor organization".

The first indented paragraph of the notice appended to said order as Appendix "B" is modified by striking therefrom the words "or any other employer, over which the National Labor Relations Board will assert jurisdiction" and "or any other labor organization".

The second indented paragraph of the notice appended to said order as Appendix "B" is modified by striking therefrom the words "or any other employer, over which the National Labor Relations Board will assert jurisdiction," and "or any other labor organization".

The fourth indented paragraph of the notice appended to said order as Appendix "B" is modified by striking therefrom the words "or any other employer over which the National Labor Relations Board will assert jurisdiction,".

It is further ordered that respondents herein notify the Regional Director for the Twenty-fourth Region in writing within thirty (30) days from the date of this Decree of the steps they have taken to comply with said order as herein modified, and affirmed and enforced.

By the Court:

/s/ ROGER A. STINCHFIELD  
Clerk.

Approved:

/s/ PETER WOODBURY  
Ch. J.

. . . .

[fol. 45] IN UNITED STATES COURT OF  
APPEALS FOR THE FIRST CIRCUIT

\_\_\_\_\_  
(Title omitted)  
\_\_\_\_\_

MOTION FOR RECONSIDERATION—Filed July 28, 1960

The National Labor Relations Board for reasons set forth in the attached memorandum respectfully moves this Court for reconsideration of its order of July 8, 1960, and further moves the Court to enter a decree enforcing the Board's order as consented to.

/s/ Marcel Mallet-Prevost  
Assistant General Counsel  
NATIONAL LABOR RELATIONS BOARD

Washington, D. C.,  
July 26, 1960.

[fol. 46] IN THE  
UNITED STATES COURT OF APPEALS

• • • •  
ORDER OF COURT DENYING MOTION FOR RECONSIDERATION  
August 3, 1960.

It is ordered that the Motion for Reconsideration filed herein by petitioner on July 25, 1960, be, and the same hereby is, denied.

By the Court:

ROGER A. STINCHFIELD, Clerk

By /s/ DANA H. GALLUP  
Chief Deputy Clerk

Approved:

/s/ PETER WOODBURY  
Ch. J.  
• • • •

[fol. 47] UNITED STATES COURT OF  
APPEALS FOR THE FIRST CIRCUIT

No. 5691

NATIONAL LABOR RELATIONS BOARD, PETITIONER,

v.

LAS VEGAS SAND & GRAVEL CORP.

---

No. 5698

NATIONAL LABOR RELATIONS BOARD, PETITIONER,

v.

OCHOA FERTILIZER CORP., ET AL., RESPONDENTS.

SECOND MOTION FOR RECONSIDERATION—Filed Aug. 8, 1960

On August 3, 1960, this Court denied motions for reconsideration in these cases. On the same date the Court of Appeals for the Second Circuit handed down a *per curiam* opinion, copies of which are attached, which supports the views set forth in our requests for reconsideration. We therefore respectfully request the Court to entertain this Second Request for Reconsideration in the light of the attached opinion of the Second Circuit, and upon such reconsideration to enter a decree enforcing the Board's order in full.

Respectfully submitted,

/s/ Marcel Mallet-Prevost  
Assistant General Counsel  
NATIONAL LABOR RELATIONS BOARD

August 5, 1960.

[fol. 48]      **ATTACHMENT TO SECOND MOTION  
FOR RECONSIDERATION**

**UNITED STATES COURT OF APPEALS  
FOR THE SECOND CIRCUIT**

**NATIONAL LABOR RELATIONS BOARD, PETITIONER,**

**v.**

**COMBINED CENTURY THEATRES, INC., and INTERNATIONAL  
ALLIANCE OF THEATRICAL STAGE EMPLOYEES AND MOTION  
PICTURE MACHINE OPERATORS OF THE UNITED STATES AND  
CANADA, AFL-CIO, LOCAL NO. 640, ET AL., RESPONDENTS.**

**MOTION OF THE BOARD TO AMEND THE COURT'S DECISION  
AND CROSS-MOTION OF RESPONDENTS TO MODIFY  
THE ORIGINAL ORDER OF THE BOARD**

**Marcel Mallet-Prevost  
Assistant General Counsel,  
National Labor Relations Board,  
Washington, D. C.**

**For Petitioner,**

**Cooper, Ostrin & DeVarco and  
Zalkin & Cohen,  
New York, N. Y.**

**For Respondents.**

**PER CURIAM:**

Upon the motion of the General Counsel for the National Labor Relations Board, our decision of May 2, 1960 is amended so as to grant enforcement to the Board's order of March 11, 1959, as well as to the supplemental order of June 22, 1959, considered in our May 2, 1960 opinion.

Respondents' cross motion that the order of March 11, 1959 be granted enforcement only upon modification is denied. Respondents ask that the Board's order be narrowed in scope so as to exclude from its prohibitions un-



lawful conduct directed at employers and unions other than those as to which evidence of violations of the National Labor Relations Act was introduced. We need not consider the merits of respondents' contention that the [fol. 49] order is too broad in scope, for the order was entered by the Board pursuant to a stipulation between the General Counsel and the respondents; having so stipulated, respondents, of course, took no exception to the order before the Board nor, indeed, did they challenge its propriety upon the original argument before this Court. In the face of the stipulation, and in the absence of any exception to the order taken before the Board or the showing of any extraordinary circumstances, the Court will not consider respondents' objections. *N.L.R.B. v. District 50*, 355 U.S. 453, 464 (1958).

We do not understand the Supreme Court's recent decision in *Communications Workers v. N.L.R.B.*, 362 U.S. 479 (1960), upon which respondents rely, to express any jurisdictional limitation upon the Board's power, the excess of which we might consider even in the absence of proper exception, but rather to mean only that the evidence before the Board must be such as to justify not only the character but also the breadth of the Board's order. Questions as to the sufficiency of the evidence will, of course, be considered by the Court upon review of the order only if they have been appropriately preserved.

/s/ J. Edward Lumbard  
U.S.C.J.

/s/ Stanley N. Barnes  
U.S.C.J.

/s/ J. Joseph Smith  
U.S.C.J.

August 3, 1960.

. . . .

[fol. 50] IN UNITED STATES COURT OF  
APPEALS FOR THE FIRST CIRCUIT

---

No. 5698.

NATIONAL LABOR RELATIONS BOARD, PETITIONER

*v.*

OCHOA FERTILIZER CORPORATION ET AL., RESPONDENTS  
On Second Motion for Reconsideration of a Decree.

---

No. 5691.

SAME *v.* LAS VEGAS SAND AND GRAVEL CORPORATION  
On Second Motion for Reconsideration of a Decree.

---

No. 5590.

SAME *v.* LOCAL 476, UNITED ASSOCIATION OF JOURNEYMEN  
AND APPRENTICES OF THE PLUMBING AND PIPEFITTING  
INDUSTRY OF THE UNITED STATES AND CANADA,  
AFL-CIO AND ITS BUSINESS AGENT,  
WILLIAM O'BRIEN

On Petition for Rehearing.

---

No. 5728.

SAME *v.* LEVITT CORPORATION; JOHN V. SULLIVAN AND  
KENSEX CORPORATION

On Petition for Enforcement Upon Stipulation  
for Certain Decree.

---

No. 5729.

**SAME v. ELCI PRODUCTS CORPORATION**

**On Petition for Enforcement Upon Stipulation  
for Consent Decree.**

---

[fol. 51]

No. 5736.

**SAME v. UNION DE SOLDADORES, MECANICOS, MONTADORES  
DE ACERO, AUXILIARES Y RAMAS ANEXAS, LOCAL 1839  
ILA-IND AND INTERNATIONAL LONGSHOREMEN'S  
ASSOCIATION, DISTRICT COUNCIL OF THE PORTS  
OF PUERTO RICO, ILA-IND**

**On Petition for Summary Enforcement of an Order  
of the National Labor Relations Board.**

---

No. 5740.

**SAME v. INTERNATIONAL MOLDED PLASTICS OF  
PUERTO RICO, INC.**

**On Petition for Summary Enforcement of an Order  
of the National Labor Relations Board.**

---

**Before WOODBURY, Chief Judge, and HARTIGAN  
and ALDRICH, Circuit Judges.**

---

*Dominick L. Manoli*, Associate General Counsel, and  
*Marcel Mallet-Prevost*, Assistant General Counsel, on mo-  
tions, petitions and memoranda, for National Labor Rela-  
tions Board.

Appearance of *Sarah Torres Peralta* for Las Vegas  
Sand and Gravel Corporation.

Appearances of *Raymond E. Jordan*, *William A. Curran*,  
and *Sherwood & Clifford* for Local 476, etc.

George L. Weasler on the answer for International Molded Plastics of Puerto Rico, Inc.

---

OPINION OF THE COURT—October 18, 1960

ALDRICH, *Circuit Judge*. During the past two months we have accumulated for simultaneous disposition a number of motions by the Labor Board which, for one reason or [fol. 52] another, are uncontested.<sup>1</sup> We here consider (1) a second motion for reconsideration of a decree entered following stipulations by the parties in *NLRB v. Ochoa Fertilizer Corp.*, where we granted less relief than the respondents had agreed to; (2) the same in *NLRB v. Las Vegas Sand and Gravel Corp.*; (3) petition for rehearing filed in *NLRB v. Local 476, United Ass'n of Journeymen and Apprentices of the Plumbing Industry*, 1 Cir., 1960, 280 F.2d 441; (4) motion for decree following stipulation in *NLRB v. Levitt Corp.*; (5) the same in *NLRB v. Elci Products Corp.*; (6) petition for summary decree after hearing in *NLRB v. Union de Soldadores*; (7) the same in *NLRB v. International Molded Plastics of Puerto Rico, Inc.* The questions presented presented by the several motions are not identical, but they all involve the appropriate breadth of a Board order. In each of these cases the Board seeks an order which would enjoin respondent, or respondents, therein from engaging in some particular proscribed conduct not only with respect to the immediately involved party but with respect to "any other" party. We will characterize such orders as broad, although in some instances the Board asserts otherwise.<sup>2</sup>

In the *Ochoa Fertilizer* case it was charged that the respondent employer illegally maintained a closed or preferential shop agreement with the respondent union. The

---

<sup>1</sup> In item 7, *infra*, the respondents have sought to file exceptions late. We are not satisfied from a review of the entire record that the Board erred in holding that respondents had presented an inadequate excuse for having failed to act with due expedition.

<sup>2</sup> No question is involved here, in spite of frequent references to the matter by the Board, of phrasing a decree with sufficient breadth to forestall "easy evasion." *McComb v. Jacksonville Paper Co.*, 1949, 336 U.S. 187, 193; *International Bhd. of Electrical Workers v. NLRB*, 1951, 341 U.S. 694, 705-6.

complaint filed by the Board alleged violation of sections 8(a)(1), (2) and (3), and 8(b)(1)(A) and (2) of the National Labor Relations Act. No hearing was held, but a stipulation was filed in which both respondents admitted the charges and agreed to the entry of a broad order. The employer was to be enjoined from agreeing with the respondent union, "or any other labor organization," with respect to unlawful discrimination in favor of its members, or person approved by it, with regard to hiring or conditions of employment. Similarly, the union was to be enjoined from making any unlawful preferential arrangements with Ochoa Fertilizer Corp., "or any other employer." Both respondents agreed that the appropriate Court of Appeals could enter decrees pursuant to the stipulation without notice, hearing or objection. After we had excised, *nostra sponte*, from the proposed form of decree all references to "any other labor organization" and "any other employer," the Board moved for reconsideration, and we denied the motion. It has now moved for further reconsideration.

In the *Las Vegas* case the situation is in all respects similar, except that the charges, based on alleged violations of sections 8(a)(1) and (3) of the act, were of various unlawful activities interfering with respondent's employees' joining Local 925 of the charging union. The Board's order, following a stipulation of the parties, forbade the employer to engage in such activities directed against "the union, or any other labor organization." We excised the phrase "or any other labor organization," and thereafter denied a motion for reconsideration. Again, the Board moves for further reconsideration.

In item (3), *NLRB v. Local 476, United Ass'n of Journeyman and Apprentices of the Plumbing Industry*, 1 Cir., 1960, 280 F.2d 441, a section 8(b)(4)(A) case, the respondent union was found to have induced a strike against Joseph P Cuddigan, Inc., the secondary employer, in order to assist its dispute with the E. Turgeon Construction Company for whom Cuddigan was doing subcontracting work. The Board's proposed order forbade inducing the employees of Cuddigan "or of any other employer" to strike for the purpose of inducing Cuddigan "or any other employer or person" to cease doing business with Turgeon "or any other company." We struck the quoted phrases.



*NLRB v. Levitt Corp.*, item (4), is an action against three employers arising out of charges of discrimination by the local chapter of the United Brotherhood of Carpenters and Joiners. As in *Local 476* the charges made no reference to any other union. However, a complaint was filed asserting violations of sections 8(a)(1) and (3) by reason of unlawful activities discouraging membership in the union "or any other labor organization." The quoted phrase of the complaint was purely conclusory. Thereafter a stipulation was filed in which each employer consented to a decree enjoining activities directed against "the Carpenters Union or any other labor organization." No facts are adduced in this stipulation which go beyond the specific allegations of the charges, and there is no affirmative indication that any other labor organization may be involved, presently or prospectively.

(5) *NLRB v. Elci Products Corp.* is in all respects similar, in origin and in proposed disposition, to the *Levitt* case, except that the specific activities charged are even more restricted in extent, if not in character.

(6) In *NLRB v. Union de Soldadores*, a discharged employee filed charges against the local and its parent union, hereinafter called the District Council, asserting that he had lost employment because of the respondents' maintenance of an illegal preferential hiring agreement in violation of sections 8(b)(1)(A) and (2). The District Council was defaulted, and the local took no exceptions to the findings or recommendations of the trial examiner following the hearing. The examiner proposed that the [fol. 55] respondents be enjoined from enforcing any agreement with the particular employer, Abarca, Inc., whereby unlawful preference would be extended to their members. The Board enlarged this to read "Abarca, Inc., or any other employer over which the board will assert jurisdiction." The record does not reveal any special circumstances which could support this amplification.<sup>3</sup>

<sup>3</sup> In a memorandum in support of this particular order the Board seeks to distinguish the *Ochoa Fertilizer* and *Las Vegas* cases on the ground that "in the instant case . . . the Board's findings support the order in the terms in which it was entered. The findings show, for example . . ." (Ital. suppl.) The "examples" given are: (a) a statement that the charging party "testified" that he paid a fee to the District Council while previously working for some other



*NLRB v. International Molded Plastics of Puerto Rico, Inc.*, item (7), is a complaint alleging violation of sections 8(a)(1) and (3), in all respects similar to *Las Vegas*. However, in this instance we have a full report of the testimony and findings of the examiner, the case being one in which the Board moves for summary entry of a decree. Here, again, it is plain on the record that only the one union, and no generalized course of conduct, is involved.

In the aggregate this exhibits a marked fondness on the part of the Board for broad decrees. We might add to this list our recent cases of *NLRB v. Bangor Bldg. Trades Council*, 1 Cir., 1960, 278 F. 2d 287, and *NLRB v. Local 111, United Bhd. of Carpenters*, 1 Cir., 1960, 278 F. 2d [fol. 56] 823. In no case in which the record before us revealed the evidence available to the Board<sup>4</sup> was there any evidence of similar misconduct directed towards other employers, or other labor organizations. On this substantial showing we must at least suspect that the Board uses the broad form of decree as a matter of course. This suspicion is confirmed by the Board's memoranda presently before us. We do not approve of such a practice.

An order, when implemented by us, becomes an injunction. The Supreme Court emphasized this in excising overly broad portions of a Board order in *NLRB v.*

employer; (b) a statement that, at the request of the District Council, he had been discharged by that other employer, which discharge is "the subject of another unfair labor practice proceeding . . . ." We have had occasion before to point out that a recitation of testimony is not a "finding." *NLRB v. Local 176, United Bhd. of Carpenters*, 1 Cir., 1960, 276 F.2d 583, 584. *A fortiori*, a statement that a matter is presently the subject of another proceeding is not a "finding." *Cf. NLRB v. Local 926, Int'l Union of Operating Eng'rs*, 5 Cir., 1959, 267 F.2d 418, 420. If by the use of the words "for example" counsel means to suggest that there are other special findings in the record which support his contention, we can only say that a careful search has failed to discover them. Counsel should not place such a burden upon us.

<sup>4</sup> This includes *Local 111* because, although that case came up on a petition for summary enforcement, due to the respondent's having failed to file objections or exceptions, we had the findings of the examiner containing a detailed account of the evidence. It does not include the consent cases, with which we shall deal separately.

*Express Publishing Co.*, 1941, 312 U. S. 426; see Note, 1944, 54 Yale L. J. 141—affirmative reasons must appear to warrant broad injunctions. *Express Publishing Co.* has recently reaffirmed in *Communications Workers v. NLRB*, 1960, 362 U. S. 479, a section 8(b)(1)(A) case, where the court held, virtually without discussion, that because there was no evidence of a “generalized scheme” a union’s interference with the employees of one particular employer could not justify a decree against activity with relation to the employees “of any other employer.” The Board, however, draws a very narrow lesson.<sup>5</sup> In *Las Vegas*, where there is no suggestion in the record of any other union’s being in the picture, a request is made for a decree which would subject the employer to contempt proceedings [fol. 57] if it engaged in the prohibited conduct, not only with respect to the charging union, but as to “any other labor organization.” The Board argues, “If respondent’s employees should evince interest in another union . . . [they should] be protected if they exercise their statutory right to ‘form, join, or assist’ another union.” “It is not unreasonable to infer that [the employer] would repeat his conduct if they tried to organize another.” (This last contention was watered down in *Ochoa Fertilizer* to say it is not “unreasonable to infer that [the union] may engage in similar hiring practices with other [s].” (Ital. suppl.) These are the same unsubstantiated suppositions the court held to be insufficient. Again, in *Local 476*, where there was no evidence of any pattern or general course of conduct, the Board, without reference to this fact, openly states that its order was addressed broadly, “as in uniformly the case where the Board finds a violation of section 8(b)(4)(A).” See also *NLRB v. International Molded Plastics*, likewise tried on the merits.

We cannot avoid the conclusion that the Board finds it proper to take a single offense as establishing the “gen-

<sup>5</sup> In *Soldadores* and *International Molded Plastics* it draws none at all. See *infra*. In connection with *Ochoa Fertilizer* it asserts that the *Communication Workers* case is not applicable since particular coercive conduct is distinguishable from an unlawful hiring arrangement, and that there is “more reason” to expect that the latter will be repeated. This “reason” is not clear to us, and in view of what we find to be the Board’s general practice it seems in the nature of an afterthought.

eralized scheme" (*Communication Workers v. NLRB*; *supra*), "proclivity" (*McComb v. Jacksonville Paper Co.*, *supra*, at 192), or "pattern" (*NLRB v. Brewery and Beer Distributor Drivers*, 3 Cir., 1960, F.2d ), necessary to warrant wholesale relief. Its logic, in the face of the clear pronouncements of the Court, escapes us. In those cases in which the record makes it apparent that there was but a single party involved we will not grant it. *NLRB v. United Bhd. of Carpenters*, 7 Cir., 1960, 276 F.2d 694; *NLRB v. Local 926, Int'l Union of Operating Eng'rs*, 5 Cir., 1959, 267 F.2d 418, 420; *International Bhd. of Teamsters v. NLRB*, D.C. Cir., 1958, 262 F.2d 456, 462.

[fol. 58] We turn to the consent cases, in which no evidence is presented by the record. The Board contends that we have "no right" not to enter the decree that the parties have stipulated to. It cites *NLRB v. Cheney California Lumber Co.*, 1946, 327 U.S. 385, for the proposition that in the absence of timely objection by the respondent, this court must enforce any order propounded by the Board. In our opinion that case stands for no such proposition. The court there was careful to point out that findings of record disclosed a "course of conduct against which such an order may be the only proper remedy." *Id.* at 389. It was equally careful to point out that the situation would be different if the Board had "patently traveled outside the orbit of its authority." *Id.* at 388. We readily concur that we have no right to deny enforcement of an order warranted by the record. This concession does not advance the matter, however, for we equally have no right to enter one which is not warranted. The question is, what does the record warrant.

An injunction broader than the need is not only contrary to all established equitable principles, but it is peculiarly inappropriate in the sensitive area of labor relations where abuses formerly rampant under broadly and vaguely worded decrees are legendary. See, *e.g.*, Frankfurter and Greene, *The Labor Injunction*, Ch. III (1930). The Norris-LaGuardia Act, 29 U.S.C. §§ 101-115, put an end to these abuses in the federal courts, and the broad principle for which it stands has not been compromised by subsequent labor legislation. Nor should it be by any

"expertise" of the Board. We have seen that the Board's conclusion that "it is reasonable to infer" that a single offender will be an habitual one falls far short of the necessary showing. Nor does the willingness of a party, apprehended in an admitted offense, to bargain away by [fol. 59] stipulation his future right to be free of injunctions covering situations not yet *in esse* seem to us an adequate substitute.<sup>6</sup>

The Board observes in the consent cases that "it cannot be assumed that the evidence could not have supported the order." In the light of its already demonstrated approach, however, we think that such an assumption would not be unreasonable. Since the Board cries "Wolf" in every case, the cry has lost any significance. Our normal disposition is to assume, in the absence of a contrary showing, that a case is an ordinary one, rather than a special case calling for extraordinary relief. We do not think that consent makes the difference. We do not mean by this that, where no rights have been saved, a record will be scrutinized for every defect. We are not interested in errors on the merits, or in the propriety of specific relief, of which the parties have failed to complain.<sup>7</sup> But we regard a broad general decree as going to the root of the policies of the Act and rising above the failure of a respondent to save its rights.<sup>8</sup>

Nor are we aware of any urgency calling for broad orders. The Board complains that our decision means

---

<sup>6</sup> The circumstances under which such consent is obtained are readily imaginable. General Counsel presents a broad decree. The respondent demurs. Counsel says this is our standard procedure. If respondent again demurs, counsel asks, "What is the objection? Do you intend future violations?" In this dilemma respondent, apparently, must either give in or litigate a pure matter of principle.

<sup>7</sup> For example, we do not consider whether the full reimbursement order in *NLRB v. Union de Soldadores* was warranted. Cf. *NLRB v. Local 176, United Bhd. of Carpenters*, 1 Cir., 1960, 276 F.2d 583, 586.

<sup>8</sup> We do not follow the Second Circuit in *NLRB v. Combined Century Theatres, Inc.*, 2 Cir., 1960 F.2d (per curiam), where the court may not have had our advantage of seeing the Board's practice outlined by a background of similar requests.



"that no 'broad' order can ever be entered by consent stipulation . . . [and the parties] will be compelled to go to hearing in order to present this Court with a record on which a 'broad' order could be sustained." This, of [fol. 60] course, is absurd.<sup>9</sup> All the Board has to do is to obtain from the respondent a stipulation disclosing facts which warrant broad relief. We will not go behind evidence which the parties state to be so. On the other hand, if the respondents are unwilling so to stipulate, there is no reason for the Board to complain that it cannot have such an injunction without a hearing. We can think of no irremediable disaster that will occur. If a new violation takes place, but with respect to a stranger to the present litigation, a preliminary injunction can be sought from the district court. There is no reason to think that such a procedure would take longer than a contempt action before an appellate court which is not in daily session.<sup>10</sup> In fact, all that the Board really loses by our decision, is the *in terrorem* effect of a ready avenue to contempt proceedings, a result we hardly believe incompatible with the policy of the Act.<sup>11</sup>

There remain certain miscellaneous provisions in those proposed decrees with which we are presented for the first time (items 4-7). In *Soladores* the Board's order includes the following paragraph.

"In any other manner interfering with, restraining or coercing employees in the exercise of their rights guaranteed in Section 7 of the Act, except to the extent that such rights may be affected by an agreement

<sup>9</sup> It does seem apparent, however, that a respondent cannot settle his case under the present policy of the Board without submitting to a broad decree. See n. 5, *supra*.

<sup>10</sup> For example, in *Alpert v. United Bhd. of Carpenters*, D.C.D. Mass., 1956, 143 F.Supp. 371, and *Alpert v. International Typographical Union*, D.C.D. Mass., 1958, 161 F.Supp. 427, both cases of some complexity, the entire proceedings from filing to injunction took only 14 and 22 days, respectively.

<sup>11</sup> There is perhaps one more consequence. If the respondent commits some future unrelated act and the Board has an injunction already at hand, it is saved the trouble of conducting its own hearings. We will not assume this to be its motive.

requiring membership in a labor organization as a [fol. 61] condition of employment, as authorized by Section 8 (a) (3) of the Act."

The same language, but in shorter form, is found in *International Molded Plastics*. In this the Board seeks not simply to distinguish *NLRB v. Express Publishing Co.*, *supra*, but flatly asks us to overrule it. We have neither the power nor the desire to do so. In *Levitt and Elci* similar paragraphs commence, "In any other like or related manner interfering with . . ." These we accept, bearing in mind that if occasion arises, we will construe them consistently with the views expressed in this opinion. Such provisions, in other words, have a proper place to prevent "easy evasion."

*Orders and decrees will be entered in conformity with this opinion.*

[fol. 62]            IN THE UNITED STATES  
                         COURT OF APPEALS

•   •   •   •

ORDER OF COURT DENYING SECOND MOTION FOR  
RECONSIDERATION—October 18, 1960

It is ordered that the Second Motion for Reconsideration filed herein by petitioner on August 8, 1960, be, and the same hereby is, denied.

By the Court:

/s/ ROGER A. STINCHFIELD  
Clerk.

Approved:

/s/ PETER WOODBURY  
Ch. J.

•   •   •   •

[fol. 63] Clerk's Certificate to foregoing transcript  
omitted in printing



[fol. 64] SUPREME COURT OF THE  
UNITED STATES

No. 654, October Term, 1960

NATIONAL LABOR RELATIONS BOARD, PETITIONER

VS.

OCHOA FERTILIZER CORPORATION ET AL.

ORDER ALLOWING CERTIORARI—March 6, 1961

The petition herein for a writ of certiorari to the United States Court of Appeals for the First Circuit is granted.

And it is further ordered that the duly certified copy of the transcript of the proceedings below which accompanied the petition shall be treated as though filed in response to such writ.

assert jurisdiction," in accordance with the cease and desist provision quoted above.

In addition, the stipulation provided that "any United States Court of Appeals for any appropriate circuit may on application by the Board, enter a decree enforcing the Order of the Board" issued in accordance with the stipulation, and that "Respondents waive all defenses to entry of the decree \* \* \*" (Stip. 10, ¶ VIII).

On March 16, 1960, the Board, approving the stipulation, entered an order following its terms in all respects, including the references to the respondent unions "or any other labor organization" and the respondent company "or any other employer \* \* \*" quoted above. On June 14, 1960, the Board, pursuant to the stipulation, petitioned the court below for a decree enforcing the order.

On July 8, 1960, the court, *sua sponte*, modified the Board's order and notice by striking the phrases "or any other labor organization" and "or any other employer over which the Board will assert jurisdiction" wherever they occurred, and, as so modified, enforced the order (pp. 7-9, *infra*). The Board filed two motions for reconsideration. The first was denied on August 3, 1960 (*infra*, pp. 7-9). The second was denied on October 18, when the court in a single opinion upheld its modification of uncontested orders entered by the Board in seven different cases (*infra*, pp. 10-21).<sup>2</sup>

<sup>2</sup>The Board is petitioning for certiorari in three of those seven cases: (1) the instant case; (2) *National Labor Relations Board v. Las Vegas Sand and Gravel Corp.*; and (3) *National Labor Relations Board v. Local 476, Plumbers.*

#### REASONS FOR GRANTING THE WRIT

This case presents the same question as that involved in *National Labor Relations Board v. Brandman Iron Co.*, 281 F. 2d 797 (C.A. 6), pending before this Court on petition for certiorari, No. 646, this Term—i.e., whether the court of appeals has power under the Act to modify an order which was not contested before the Board. As shown in the Board's petition in *Brandman*, to which we respectfully refer the Court, the view of the court below is contrary to decisions of this Court and in conflict with those of other circuits. Moreover, the question presented is of importance in the administration of the Act.

For the foregoing reasons, this petition for certiorari should be granted, or, in the alternative, held in abeyance pending a decision on the question in *Brandman*.

Respectfully submitted.

J. LEE RANKIN,  
*Solicitor General.*

STUART ROTHMAN,  
*General Counsel,*

DOMINICK L. MANOLI,  
*Associate General Counsel,*

NORTON J. COME,  
*Assistant General Counsel,*

MARION L. GRIFFIN,  
*Attorney,*  
*National Labor Relations Board.*

JANUARY 1961.